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EDUCATION FOR THE BAR IN THE UNITED STATES

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There is no country in which it is as important that the lawyers should be well educated for their profession, as it is in the United States. Here they hold a political position. They are a recognized part of the machinery of government. All are officers of courts that have the acknowledged power of interpreting constitutions and statutes, which may be invoked as grounds of action or defence in pending litigation, and of holding statutes inconsistent with a constitution so interpreted to be void. Other nations may confer on the judiciary a similar authority in terms, but nowhere else is the exertion of such authority common and accepted by all as conclusive. In the last resort, questions of constitutional law and statutory construction will be decided in a court, manned exclusively by those who have been trained for the bar, after hearing argument from lawyers who have been educated in the same manner.

The constitution of the American Bar Association has a standing committee on "Legal education and admission to the bar." Their reports, from time to time, have been influential in securing action which, since the foundation of the association in 1878, has served to lengthen the general term of study required for the admission to the bar, to broaden the field of study, and to trans-

fer the general place of study from a lawyer's office to a law school.

In February, 1913, this committee unanimously addressed an important request to the Carnegie Foundation for the Advancement of Teaching. It was for a "searching and far-reaching" investigation of the conditions under which the work of legal education is carried on in this country, and a "frank and fearless" statement of "the facts which the investigation may reveal." The sending of this request was reported by the committee to the association at its next meeting, in 1913, but not in season to allow it, under the rules, to be the subject of any action at that time.[1]

The Foundation undertook to do what the committee asked, and entered on the work early in 1913. Its purpose is to make an examination of all the law schools of the United States, their various curriculums of study, their libraries, and their general facilities for teaching; to consider the relation of the legal profession to the administration of the law and to the obligations of modern society; to trace the evolution of the profession, its relation to legislation and administration, and that of the number of lawyers to the amount of litigation; and to investigate the cost of the legal process.[2]

In December, 1914, the Foundation published a preliminary paper, entitled "The common law and the case method in American university law schools." This constitutes "Bulletin No. 8" of its publications, and a copy will be sent to any one who requests it. The presentation of the final report is not expected before the summer of 1916.

To quote from the preface of this bulletin (p. vi), "it seemed clear to the officers of the Carnegie Foundation that it would be difficult to obtain from any teacher of law or any practitioner of law in America a thoroughly sound, fair-minded, and scholarly report" on the question of the case method of instruction.

They therefore determined to employ a foreigner for this work, selecting Dr. Josef Redlich, professor of law in the University of

[1] See the reference to the subject in the *Reports of the American Bar Association*, xxxix, 18.

[2] *Reports of the American Bar Association*, xxxviii, 476.

Vienna, who has published two volumes on certain forms of government in England. He had made an extended visit to this country in 1910. Two months more he spent here in the fall of 1913, visiting ten of our hundred and fifty law schools, and attending class exercises in each.

Dr. Redlich praises highly the opportunities afforded in the law schools of the United States, where the case method prevails. "The American student," he says, "gains in the modern law school of his country, all the practical knowledge of the law that any school can give to a future attorney or judge, in unparalleled manner."[3] But what, to him, is the case method? It is not the case method now practiced in most of our law schools which have adopted that system. It is not a method which excludes special instruction of an introductory character in the elementary principles of American law. To quote his words (p. 41):

"It is characteristic of the case method that where it has thoroughly established itself, legal education has assumed the form of instruction almost exclusively through analysis of separate cases. The result of this is that the students never obtain a general picture of the law as a whole, not even a picture which includes only its main features. This is, in my opinion, however, just as important for the study of Anglo-American law as for the codified continental systems, and is a task which should also be accomplished by the law courses in the universities. To this end, the following seems to me above all things requisite:

"First, as an introduction to the entire curriculum, care should be taken to introduce to the students, in elementary fashion, the fundamental concepts and legal ideas that are common to all divisions of the common law. Or, to express it in a word current in European pedagogy, the beginners in American law schools should be given a legal *Propädeutik*, or preparatory course, which in a simple yet scientific manner shall set forth the elements of the common law; shall furnish, that is to say, a comprehensive view of the permanent underlying concepts, forms, and principles, not forgetting the elementary postulates of law and legal relation-

[3] Bulletin No. 8, 40.

ships in general. The more rigorously *casuistic* the case method of instruction, which then follows, necessarily has to be, the more important it seems to me it is to make clear to the students at the very beginning certain fundamental facts and guideposts of the law which are removed from all casuistry and theoretical controversy. Only in this way will their future studies rest upon a solid and scientifically grounded foundation."

The "Institutes-course" always given to German and Austrian law students he regards as a useful preface to special instruction in particular subjects and, to quote further (p. 42):

"Similarly, in my opinion, in American university law schools the students ought to be given an introductory lecture course, which should present, so to speak, 'Institutes' of the common law. Every department into which the American law is divided, whether as common law or equity, employs certain common elementary ideas and fundamental legal concepts which the student ought to be made to understand before he is introduced into the difficult analysis of cases. Concepts such as choses in action, person and property within the meaning of the law, complaint and plea, title and stipulation, liability and surety, good faith and fraud, should, in these introductory lectures, be given to American students in connection with a system of the law, even though this should include only the general fundamental features. They should not, as usually occurs today, come to the students unsystematically and unscientifically, as scraps of knowledge more or less assimilated out of law dictionaries and indiscriminate reading of text-books." . . . . "A scientifically constructed survey of the main sources of the common law and of their relation to one another; of the concepts of customary and positive law; a short external history of the law, which should include the origin and development of the English courts of justice; a brief exposition and development of the nature and extent of the concept of equity; a description of that institution so important for Anglo-American law, the reports, and of the concept of precedent; finally also a glance at the phenomenon of statutory law (legislation) and its nature and forms; all these things and much else connected with them ought to be furnished the students at

the beginning of their studies, before their introduction to the analytical study of the cases. The fact that this ground can be covered only in elementary and summary fashion need not prevent the presentation from being thorough and scientific.

"This, then, would be another task to be accomplished by an 'Institutes-course' in the English common law. A further service would be the introduction of the students from the beginning into the atmosphere peculiar to legal science, through direct lecturing on the part of a living teacher. I attach very great importance to the direct lectures of a legal scholar who has been trained in a thoroughly scientific manner. It is simply doctrinaire exaggeration on the part of many contemporary law teachers in American universities, when, in order to preserve the exclusiveness of the case method as a unique, hermetically sealed system of teaching, they reject every lecture *a limine* as a means of instruction; when they describe such lectures as mediaeval and therefore obsolete; when they declare that lectures today do not easily arouse, and still less easily hold, the interest and attention of the students. In the same way that the students put down in their note books the main points which are brought out by discussion in the pure case method exercises, so they can just as well jot down the train of thought of a series of such lectures, in which the elemental concepts of the law and the most important details of legal terminology are explained to them. Such a course of preliminary lectures, whose nature throughout should be that of talks to beginners, would, in my opinion, with great profit, take the place of the now customary, unscientific introduction to the law, through law dictionaries and discursive reading."

This Institutes-course Dr. Redlich thinks should occupy three or four weeks of the first third or half of the opening year. The study of case-books might proceed at the same time, but if (p. 44) "during the first few weeks of study, the main task of the pupils consisted in a course of 'Institutional Lectures,' then, in my opinion, we should essentially shorten and diminish that confusion and obscurity which—as is admitted by even the most zealous advocates of the exclusive case method—troubles most of the young men at present during a large part of their first year in

their attempts to analyze the cases. They would enter upon the analysis with a certain amount of definite knowledge, and certainly with a better understanding of the sense of the entire machinery of the law. They would learn more quickly to group under several general heads the particulars with which the study of the cases supplies them, and thus from the beginning would introduce a certain orderly arrangement into their growing knowledge of the law. In other words, the accumulation of the material of legal thought, taking place daily through the analytical exercises, would from the beginning take place systematically and with a certain consciousness of purpose."

Dr. Redlich also thinks it advisable at the end of his course, "to furnish the American law student once more, before he steps out directly into practical legal life, a certain general summing up and survey of the law. If the student has mastered all essential institutions and doctrines of the common law during his three years' course, through the analysis of countless cases, he will certainly now be sufficiently matured to undertake, with full understanding, two important tasks. First, he should be able to grasp the general scientific theory of the law as one of the great dominating *phenomena* of human civilization and human thought. Secondly, he should now be fully prepared to cast to great advantage a comparative glance at that second mighty system of law which has shaped the history of humanity, namely, the Roman law."

It is evident that a plan of legal education such as Dr. Redlich thus recommends is a combination of the case-book and lecture system. To a certain extent, such a combination is now made in every law school professing to follow the case method. There are, to quote his words (p. 30) "broad, introductory lectures" to give an "elementary knowledge of law." The professor does not discuss cases on torts with his classes, until he has told them what a tort is; when it is also a crime; and how such a wrong can be redressed by a civil action. If he compiles a case-book, he will be very apt to put in it somewhere (perhaps as in Beale's *Conflict of Laws*, at the close of a third volume), a general summary of doctrine, properly indexed for easy reference.

No case-book can serve its purpose well unless its study is preceded or supplemented by more or less of such explanations.

A law school can never entirely supersede the lawyer's office as a place of preparation for the legal profession. No small part of a man's education for the bar must be sought at the bar. The world, for all men, is the best university. It may be doubted, therefore, whether Dr. Redlich is right in (p. 46) proposing that what is now generally received as the normal term of legal study shall be extended from three years to four. He would, however, at the same time reduce the period of previous college study by a year, by setting in that "a more rigorous pace" (p. 47).

If three years is as long a time as most men can devote to attendance at a law school, the graduates of those law schools which pursue the case method strictly and exclusively will unquestionably enter the bar with less legal knowledge than the men trained at those which maintain the other system. A more important question is whether they can use what they do know to better advantage.

An answer to this will always depend somewhat on the mental characteristics of the particular man. Nature makes lawyers, as she makes poets. No kind of legal education can create him. It can only bring out what is in him, and give him material to work upon. By men of high intellectual power more can be got out of a scanty and partial education than the ordinary student can derive from the best and fullest.

Systems of legal education are generally, and always should be, planned to suit the needs of the average man. For him any strict and exclusive adherence to case-books as implements of instruction is certainly undesirable. For him also any strict and exclusive adherence to the method of lectures is certainly undesirable. He needs to have things made plain to him. He needs something to which to refer for a statement of fundamental principles in proper form. His education should be mainly in universals. Exceptions to general principles, engrafted upon them by particular decisions of courts, he may be left largely to study for himself, when, in later years, matters are put in his charge which make them important. A pure case system is better for

him than a pure lecture system. It is better for anybody. But a system that combines instruction in elementary law with the study of cases and of text-books is better still.

In its best form, instruction whether from text-books or case-books is much the same. It consists in asking questions in the class room, based upon a study of a book out of the class room, and questions not as to what rules the book lays down, but as to what leads to those rules, and what are their proper limitations. Let the instructor put a case to a student, not such exactly as he may have read of in this book, but while in some points similar, in others divergent. This calls for reasoning, more than memory.

In the great majority of American law schools, text-books are used in some courses, and lectures in some. In every American law school, cases are studied out of the class room, either with a view to their future discussion in the class room, or because they have been referred to by the instructors as authorities for doctrinal statements of particular importance. In the smaller law schools, or in advanced classes numbering but a few scholars, in some of the larger ones, cases are thus studied in the original reports. It is, notwithstanding the chance to read the head-notes first, the ideal mode of case study, except for the practical difficulty which arises when several men desire to use the same volume at the same time; and this can be partly remedied by resort to the plan of reading aloud. In the largest law schools this is impossible, and hence the case-book has been evolved, which is in its best form a combination of cases, explanatory statement, historical documents, and comment.

The first one published in the United States was issued at Hartford in 1810 by Zephaniah Swift, one of the judges of the supreme court of Connecticut and for many years also a successful teacher of law to students in his office, which came to be known as Swift's Law School. It was a treatise on evidence, of 174 pages, with an appendix, containing the principal cases to which reference was made in it, covering 68 pages. The best of these compilations are those which, when put together by men of superior mind, contain the most explanations of history and doctrine.

Thayer's *Cases on Constitutional Law* may serve as an instance. This begins with a dozen pages delineating the nature of constitutional government; then gives 8 pages to two or three old cases preceding the commonwealth; then 9 pages of an institutional character; then a case occupying one page; and then 5 pages from Locke on government. Of the part devoted to the written constitutions in the United States, the first seven pages are given to the learned note of the reporter to Paxton's case, concerning writs of assistance, supplemented by further notes by Professor Thayer himself. On page 81 commences a series of extracts from the *Journals* of the continental congress and the Federalist, running to page 94. An admirable discussion of the judicial power to disregard unconstitutional statutes extends from page 146 to page 154, and a note on administrative rules and advisory opinions from page 171 to page 177.

A book of this character, in the hands of a capable instructor, is both an intelligible guide for the ordinary student and a contribution to legal literature.

On the other hand, a teacher who endeavors to confine himself to dealing with reported cases alone, giving no explanations or illustrations by word of mouth, will inevitably fail to impress himself or his subject on the mind of the ordinary man whom he meets in the class room.

As Dr. Redlich somewhat misconceives the ordinary meaning of the term "case-method," so he still more obviously misconceives the meaning of the term "text-book method." "The essential feature of this," he says (p. 8), "is that from recitation period to recitation period, the students are assigned a specified portion of a regulation text-book to study, and for the most part to memorize: this is then explained by the teacher and recited on at the next period. In this method of instruction one part of the hour is occupied with the more or less purely mechanical testing of the knowledge learned by the students, the so-called quizzing."

No real teacher of law has ever used a text-book in that manner. Students are not expected, for the most part, to memorize what they find in it. Memorizing is confined to a few general

maxims, rules and definitions. Nor is the recitation ever a mechanical testing of the knowledge learned. It is a means of ascertaining what conceptions of the subject in hand the student has gained, and how he is able to apply these conceptions in working out questions of liability on supposed states of fact, put before him by the instructor. It is a test of his understanding, rather than of his recollection.

In one, at least, of our American law schools, instruction in lectures or by text-books has been for many years supplemented by the use of a set of cases on the same subject printed separately, to be read *pari passu*. Such sets are easily enlarged, and have been commonly arranged topically in a sort of portfolio.

The American law lecturer, it may be added, unlike the German law lecturer, is usually glad to welcome the interposition of a question by any of the class, who may feel that he needs some further information to enable him fully to understand what he has heard. Such questions often give the lecture much the aspect of a Socratic discussion. Indeed, the first quarter of the class room hour is not infrequently given to questions from the desk on the subject of the preceding lecture.

At the Yale Law School, the first year students have always received instruction, at the beginning of their course, as to the general sources and characteristics of law in the United States. At Harvard it is now proposed to institute something in the nature of such a course, beginning next fall. The reason for this is thus stated in the *Harvard Law Review* for June, 1915 (p. 630):

"Dean Thayer pointed out in his annual report that one of the difficulties of the first year law student is his tendency to entertain a view of the law as a mysterious collection of disjointed materials placed in water-tight compartments. On entering the Law School he is apt to regard contracts and torts, for example, as related to each other in no more intimate way than mathematics and literature appeared to be related to each other during his under-graduate days. The changes proposed in the law school will consist, first, in the establishment of a new half-course on general liabilities, which will furnish the necessary groundwork for the study of contracts, agents, torts, etc. In the sec-

ond place, a system of rotation in the work of the first-year men has been arranged for the various professors engaged in this instruction, so that each will have a share in handling the same course. In this way the student will come into contact with different teachers at the very outset of his work and will be impressed to a much greater degree that formerly with the essential interrelation of all branches of the law."

We venture to predict that some such initial course will eventually be recognized as necessary wherever the case-book system has taken root; and that the case-book itself will either embody more in the line of direct statement by the compiler or be supplemented by lectures to a greater extent than is now customary. Professor James Brown Scott, writing as general editor of the American case-book series, in 1913, the preface to Hall's *Cases on Constitutional Law*, truly says, "the present case-books not only devote too little attention relatively to the inculcation of knowledge, but they sacrifice unnecessarily knowledge to training."

It should be observed that the fundamental conception of American common law, from which Dr. Redlich proceeds to all his conclusions, is that (p. 35), "Common law is case law and nothing else than case law."

This is hardly even a half truth. The common law on any point existed, in theory at least, before any case in which it may be applied. It was the practice of the people, or the rule which to them seemed naturally right.

So he asserts (p. 37), that "Common law is case law, and the handling of such law is the practical calling for which the American student demands preparation." This ignores the fact that American law students must be taught something of written law and much of the rules for construing and applying it. The whole tendency of our times is to the narrowing of the field of common law by the extension of that of statutory enactment.

To conclude, the country has certainly reaped one great advantage from the adoption of the case method, wherever it has been in any substantial degree exclusively pursued. We have too large a bar. It would make for the public good were there fewer and better lawyers. The case method, where it has been most

strictly pursued, has caused many young men, after a few months of legal study, to abandon it forever. They have found what they had been accustomed to hear called legal science unscientific. They have become disgusted at endeavoring to pick it out and piece it together from a scrap heap of judicial decisions, some inconsistent with others. It has been taught, not as a whole, but in disconnected fragments. They looked for harmony and orderly progression. They have found at the outset confusion, if not disorder. They have been treated as antiquaries, and fed with historical processes, without any attempt to impart a knowledge, arranged in systematic form, of what has been achieved, and what further may be fairly anticipated.

Dr. Redlich is of the opinion that the case-book method has brought another advantage to the country, because, to use his words (p. 63), "it develops a new theoretical calling, that of the non-practicing law teacher of America. By this means, for the first time in a common law jurisdiction, the study of this law has become a career, an independent profession."

This is true; but it has created a new peril. Wherever a man goes immediately upon graduation from a law school into the chair of a law teacher, he is not unlikely to give instruction of too academic a character, and to find in reported cases too much of scientific method. The best instructors in law, *ceteris paribus*, are men who have had some practice at the bar, or on the bench. A strong man can triumph over the want of it. A weaker one may enfeeble his class by failing to call their attention to the human element in whatever judges may say or do; to the power of circumstances to affect their conclusions; and to what is often due to the atmospheric pressure of their environment.

THE BICAMERAL SYSTEM IN STATE LEGISLATION

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I

The submission of proposals for the abolition of the state senate to the people of Oregon at the two preceding general elections is occasion for a summary of considerations in reference to the bicameral system of legislation.

The bicameral system has been so long and so widely prevalent that until very recently its "necessity" has been almost universally regarded as "a demonstrated truth."[1] The British legislature, "the mother of parliaments," is a development from the assembly of "estates." Five distinct "estates" were present in the "Model Parliament" of 1295, but through the consolidation of interests, the organization of two legislative chambers, the House of Lords and the House of Commons, was soon evolved. The origin of the bicameral system was thus "not owing to any conviction that two houses would work better than either one or three, but was a matter of sheer accident," and was not "the invention of any clever constitution-maker."[2] The bicameral system of legislation, generally based upon English precedent, has usually followed the extension of constitutional government, and at present most national legislatures consist of two chambers.[3] In France and Haiti, although for ordinary legislation the

[1] DeToqueville, *Democracy in America*, Reeve's trans., vol. 1, p. 87; Esmein, *Droit Constitutionnel*, 5th ed., p. 90.

[2] Freeman, *Comparative Politics*, pp. 21–22, 234. See also Esmein, *Droit Constitutionnel*, 5th ed., p. 90. "This theory, which was unknown to the republics of antiquity—which was introduced into the world almost by accident, like so many other great truths. . . . is at length become an axiom in the political science of the present age." DeToqueville, *Democracy in America*, Reeve's trans., vol. 1, p. 87.

[3] The exceptions are Bulgaria, Costa Rica, Greece, Honduras, Luxemburg, Monaco, Montenegro, Nicaragua, Norway, Panama, Salvador and Servia. The

two houses act separately, for changes of the constitution the two are combined into one. Some independent states formerly having single representative chambers have changed to the bicameral system, and some, though fewer, changes have been made from the bicameral to the unicameral system. The British House of Lords has been finally so shorn of its power as practically to leave a unicameral legislature for the British Empire.[4]

Although in the United States and the Australian Commonwealth all the individual states have bicameral legislatures, the unicameral system either is exclusively adopted or largely predominates in all the other federations but one, and in that one (Argentina) a large minority of the States have unicameral legislatures. In the German Empire fifteen of the twenty-five States have unicameral legislatures. Most of the individual States of the Latin-American federations have but a single chamber.[5] The cantons of Switzerland have single representative chambers in all cases where the legislature does not consist of a primary assembly. Although, in general, "the bicameral system accompanies the Anglican race like the common law,"[6] there are important exceptions to this generalization. In the Australian colonies the bicameral system had been adopted, after experience with the unicameral system, half a century before the Commonwealth was established. On the other hand in the Dominion of Canada the older provinces except Quebec and Nova Scotia have abolished their original upper legislative chambers, and none of the newer provinces has ever had more than one chamber, so that at present only two of the nine Canadian provinces have bicameral legislatures.[7]

reëstablishment of the council of state in Greece effects an approach to the bicameral system. In Norway the legislature divides itself into two chambers for legislation, but conflicts between the two chambers are finally settled by joint session.

[4] Cromwell's Parliament consisted of a single house.

[5] For information on South American conditions indebtedness has been incurred to Prof. William R. Shepherd of Columbia University.

[6] Lieber, *Civil Liberty and Self-Government*, ed., 1874, p. 194.

[7] There have been some movements toward the abolition of the upper chamber of Nova Scotia. In the South African Union conflicts between the two houses are finally settled by the combination of the two houses in joint session.

Over half of the American colonies began the representative system with single legislative chambers, but in the others the bicameral system, whether in imitation of the English system or on account of local causes, was established from the first. Although the single chambers persisted in some of the colonies longer than in others, only one such legislature, that of Pennsylvania, was left at the end of the seventeenth century.[8] The unicameral legislatures of the colonies became bicameral either by the addition of a representative assembly to the assembly consisting of the governor and council or by the division of an original single chamber into two houses. In the latter case, "as a general rule the division grew out of the distinction already existing in the assemblies between the magistrates [i.e., the governor and assistants] and the deputies. The magistrates had acquired an important and distinct place in the government from the powers which they came to exercise during the recess of the general court, or from the fact that they were separately appointed by the King or proprietor, and thus represented interests distinct from those of the deputies. . . . . The distinction between the magistrates and the deputies, as two branches of the government, preceded their division as two houses of one Legislature."[9] Generally local causes were apparently more potent in this development than was English precedent.

The Congress of the Confederation consisted of only one house. When the Federal Convention assembled all of the States had legislatures of two chambers except Pennsylvania, Vermont, and Georgia, the latter of which had reverted to the unicameral system. The provision for two houses of Congress met with little opposition and it is apparent from contemporary discussion that the bicameral system was then in general favor, especially for the States. But there was some decided opinion to the contrary. This system was adopted in Georgia in 1789, in Pennsylvania in

[8] Moran, *Johns Hopkins University Studies in Historical and Political Science, Thirteenth Series*, pp. 211–58; Morey, *Annals of American Academy of Political and Social Science*, vol. 4, pp. 211–15 (1894).

[9] Morey, *Annals of American Academy of Political and Social Science*, vol. 4, p. 215 (1894).

1790, and in Vermont in 1836. All the new States have had two legislative chambers from the beginning. And representative government for the territories and dependencies of the United States has included the bicameral system in every case. "The existence of dual chambers became a recognized feature in constitution making in this country, and ceased to be a subject of discussion."[10] "This bicameral or double chamber system of legislation is an integral part of representative government."[11]

But, although there has been some imitation of the national and state governments in establishing two chambers in our city councils, the system has not generally been approved for city government and has been largely abandoned where adopted. And the other local councils have always been single-chamber bodies. Further, a fact of much greater importance in this connection but generally overlooked, the constitutional convention has always consisted of a single house. "The growth of the influence of the constitutional convention is unquestionably one of the most remarkable manifestations in the field of popular government in the United States today. The convention has been gaining strength year by year and has been absorbing powers that it earlier did not possess. . . . . This convention, oddly enough, is an assembly of a single chamber, from which the founders of this government strove so diligently to keep us free."[12]

The legislative power under the "Provisional Government" of Oregon was vested in a single house.[13] But the territorial government followed in a few years, and then the state government, each with the orthodox division of the legislature into two branches.

[10] *Senatorial Term, American Law Review*, vol. 4, p. 18 (1869).

[11] Habberly, *Bandon* (Ore.) *Recorder*, October 13, 1914.

[12] Oberholtzer, *Referendum, Initiative, and Recall*, 2d ed., pp. 71–72.

[13] Lieber was in error: "The bicameral system accompanies the Anglican race like the common law. . . . No instance illustrating this fact is perhaps more striking than the meeting of settlers in Oregon territory, when Congress had neglected to provide for them. . . . The people met for the purpose of establishing some legislature for themselves, and at once adopted the principle of two houses. It is to us as natural as the jury." *Civil Liberty and Self-Government*, ed. 1874, p. 194.

But recently the "dual chamber" has become "a subject of discussion" in Oregon, and, more recently, elsewhere. In 1912 a provision for a legislature of a single house of sixty members (the number of members of the present house of representatives) was contained in a constitutional amendment submitted by the People's Power League of Oregon to the voters under the initiative.[14] The amendment failed, but it contained such a mass of provisions that it was impossible to determine the voters' attitude on this particular provision. At the next session of the legislative assembly a proposition submitted to the senate for a constitutional amendment establishing a state "commission form of government"—contemporaneous with the similar movement in several other States—received only three votes.[15] In 1914 the question of the abolition of the senate was submitted separately, again under the initiative, by the Oregon State Grange, the Oregon Federation of Labor, the People's Power League, the Farmers' Union, the Farmers' Society of Equity, and the Proportional Representation Bureau.[16] But the proposal was defeated by a vote of 62,376 to 123,429.

II

However different the conditions in the various governments of the world at present, as at other periods of their history, the discussions of the merits and demerits of the bicameral system of legislation are generally carried on with little or no regard to questions of time, place, or circumstance.[17] And especially is there generally failure to make proper distinction in this regard between sovereign, or practically sovereign, States and component members of such States. The present discussion is directly

[14] Oregon *Referendum Pamphlet*, 1912, no. 362, art. 4, sec. 2, p. 212.

[15] Oregon *Senate Joint Resolution*, no. 21, *Senate Journal*, 1913, pp. 381, 485–486. A similar proposition failed at the session of 1915.

[16] "The senate and the office of senator in the legislative assembly of Oregon are hereby abolished. All provisions of the constitution and laws of Oregon in conflict with this section are hereby abrogated and repealed in so far as they conflict therewith. This section is in all respects self-executing and immediately operative." Oregon *Referendum Pamphlet*, 1914, no. 350, p. 82.

[17] Cf. Morgan, *Contemporary Review*, vol. 97, pp. 533–534 (1910).

concerned only with the legislatures of the non-sovereign American States under existing conditions, and particularly with those States in which the referendum has been established.

The mere general prevalence of the bicameral system has usually seemed to be its best justification. "An institution which appears with such a character of generality and permanence answers incontrovertibly to a real need."[18] And the advocates of a single chamber have generally been regarded as mere visionaries. "There have not been wanting at all times minds of a high order, which have been led by enthusiasm, or a love of simplicity, or a devotion to theory, to vindicate such union with arguments striking and plausible, if not convincing."[19] It is true the world over today that the agitation against the bicameral system comes chiefly from "radicals," although many radicals and even Socialists are on the opposite side.

"Visionaries" have been firmly convinced that the well-nigh universal notion of the usefulness of a second chamber has no foundation in truth, but is founded upon "mere prejudice—authority-begotten and blind custom-begotten prejudice."[20] "There never was any good reason for its existence except as a copy of the English House of Lords."[21] "In this country, we are so bound down by the forms early prescribed, and are so circumscribed by ingrown prejudices, that we have shrunk from adopting the single legislative body."[22] Such prejudices are considered the more unreasonable in view of the fact that "even in England at the present time the dual system has been practically abandoned and the upper house shorn of its importance."[23] Hope for departure from "blind custom" in the organization of

[18] Duguit, *Droit Constitutionnel*, vol. 1, p. 367.

[19] Story, *Commentaries*, vol. 1, sec. 559. "The proposal for the abolition of the Oregon senate has been derided by its opponents generally as a 'freak measure.'"

[20] Bentham, *Works*, Bowring's ed., vol. 4, p. 445.

[21] Gill, *Pacific Grange Bulletin*, May 1913, p. 123. See also People's Power League, *Referendum Pamphlet*, 1912, p. 221.

[22] Medill McCormick, reported in *Oregon Journal*, July 27, 1913, sec. 5, p. 5, col. 6.

[23] Hodges, Message to Kansas Legislature, reprinted in *Oregon Journal*, June 3, 1913, p. 8, col. 3. See also, especially, *East Oregonian*, May 16, 1913, p. 4, col. 1.

the state legislature is seen in the very general abolition of the "imitation half" of city councils.[24]

After habit, the most important consideration in the maintenance of the bicameral system has been the fact that it has seemed that the danger of the abuse of legislative power cannot otherwise be avoided. The bicameral system is thus a necessary part of the system of checks and balances. "If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it, within itself, into distinct and independent branches. In a single house there is no check but the inadequate one of the virtue and good sense of those who compose it."[25] "There can scarcely be any other adequate security against encroachments upon the constitutional rights and liberties of the people. . . . . The only effective barrier against oppression, accidental or intentional, is to separate its operations, to balance interest against interest, ambition against ambition, the combination and spirit of dominion of one body against the like combination and spirit of another."[26] Not only individual rights are thus protected, it is said, but, further, the executive and judicial departments are protected against the otherwise inevitable encroachment by the legislature.[27]

Such arguments *imply* the absence of effective constitutional restrictions upon legislative action, but are continually repeated in discussions concerning constitutions whose restrictions are enforced against the legislature by the courts, as in the case of Congress and the state legislatures of today. Even American writers generally seem to be entirely oblivious of the existence of constitutional limitations in this connection.

[24] People's Power League, *Referendum Pamphlet*, 1912, p. 221.

[25] Wilson, Elliot's *Debates*, vol. 5, p. 197.

[26] Story, *Commentaries*, vol. 1, sec. 558. See also ibid, sec. 551; Mill, *Representative Government*, ch. 13; Marion County Taxpayers' League, Oregon *Referendum Pamphlet*, 1912, p. 223.

[27] Burgess, *Political Science*, vol. 2, pp. 107–108; Esmein, *Droit Constitutionnel*, 5th ed., pp. 105–106. "Experience in all the States had evinced a powerful tendency in the legislature to absorb all power into its vortex. This was the real danger to the American constitutions." Madison, Elliot's *Debates*, vol. 5, p. 345.

The state legislatures are, in a sense, the direct legal successors of the British Parliament. What Blackstone said of the transcendent power of that body is as true today as it was when he wrote the *Commentaries*.[28] But "the strong language in which the complete jurisdiction of Parliament is here described is certainly inapplicable to any authority in the American States unless it be to the people of the States when met in their primary capacity for the formation of their fundamental law; and even then there rest upon them the restraints of the constitution of the United States, which bind them as absolutely as they do the governments which they create."[29] "A history of state legislatures would be largely concerned with the successive development of various methods of curtailing the almost absolute power which these bodies originally possessed. . . . . This general movement has manifested itself in the transfer of legislative power from the legislatures to the courts, to the people, and to the governor"[30]

Whatever the view which generally prevailed in the early days of our government as to the power of the courts to pass upon the constitutionality of the acts of the legislature, the vast possibilities of constitutional limitation could not have been then appreciated.

The federal constitution in its original form placed various restrictions upon the legislatures of the States, and amendments, particularly the fourteenth amendment, have added to these restrictions. The restrictions have marvelously grown at the hands of the courts. Further, federal legislation encouraged by a liberal interpretation of the powers of Congress by the courts, has occupied and thus closed or limited fields once fully open to state legislatures. So it has resulted that although this centralization of power has been offset to a slight degree by some decentralization by way of the practical delegation of legislative power to the States by Congress, the legislative powers of the States have been very greatly diminished. "Once the question was

[28] Vol. 1, pp. 160–161.

[29] Cooley, *Constitutional Limitations*, 7th ed., pp. 125–126.

[30] Mathews, *American Political Science Review*, vol. 6, pp. 220–221 (1912).

whether the States would destroy the national government. Now the question seems to be whether the national government shall be permitted to destroy the States."[31]

But the state legislatures have suffered even more from limitations imposed by the state constitutions. "The people of the States, when making new constitutions, have long been adding more and more prohibitions and restraints upon their legislatures. The courts, meantime, in many places, enter into the harvest thus provided for them with a light heart, and too promptly and easily proceed to set aside legislative acts. . . . There has developed a vast and growing increase of judicial interference with legislation."[32] The legislatures are thus bound by innumerable limitations in the way of direct prohibitions, elaborate regulation of the organization and procedure of the departments of government, the withdrawal of subjects of ordinary legislation from their jurisdiction by the enactment of details of statutory law in the constitutions, and limitations upon the length and frequency of their sessions. Moreover, the governor's control over legislation, in almost all of the States, has been steadily enlarged by both law and convention. Further, the initiative and referendum, fast extending over the States, subject to popular control whatever power is left to the legislature, and, finally, the recall, following at some distance the initiative and referendum, delivers over the individual members of the legislature to the mercies of the people.

From the operation of all these limitations, federal and state, the state legislature is today certainly "little more than a shadow of its former self."[33]

Not only in comparison with the sovereign Parliament of Great Britain is the state legislature now a feeble institution, but in general it compares little better with legislatures of other countries organized under "written" constitutions; for in most such

[31] Rogers, *North American Review*, vol. 88, p. 323 (1908).

[32] Thayer, *Legal Essays*, p. 40.

[33] Oberholtzer, *Referendum, Initiative, and Recall*, 2d ed., pp. 71–72. See also Morgan, *Contemporary Review*, vol. 97, p. 544 (1910); Dealey, *Our State Constitutions*, p. 9; Croly, *Proceedings of the American Political Science Association*, vol. 8, pp. 122–32 (1911).

cases the constitutional limitations are comparatively slight, the constitutionality of legislative action is finally determined by the legislature, and the legislature is itself the constitution-making authority.

Whatever the merits of the argument for the division of the legislature in the case of all such governments as a means of preventing abuse of power, its application to the legislature of the American States, at least those States in which the acts of the legislature are subject to direct popular control, is extremely absurd.

By far the most valuable precedents to be considered in connection with this question of the division of the American state legislature are to be found in the component states of other great federations. In most of these states, as has been observed, the legislature has only one chamber. The safest comparison may doubtless be made with the Canadian provinces, seven of the total nine of which have unicameral legislatures. It is true that the provinces have enumerated rather than residuary powers, and that the Dominion Parliament has more extensive powers than the United States Congress. But there is little positive limitation of provincial legislation contained in either federal or provincial constitutions, and the provincial legislatures may amend the provincial constitutions. The veto power of the imperial government, exercised through the governor-general, has been for the most part interpreted away. There is no check provided by separation of powers between the executive and legislative departments of the province. Popular control over the legislature through the referendum is unknown. Moreover, the functions actually exercised by the Canadian province are more extensive than those exercised by the American State.[34] If, under such conditions, the division of the legislature into two branches is not necessary to check its abuses of power, it would seem unnecessary to divide the American legislature, with all its limitations, against itself, in order to prevent its encroachment upon the rights of individuals or upon the other de-

[34] Ford, *North American Review*, vol. 194, p. 691 (1911).

partments of the government. This would seem to be the case especially where legislation is subject to popular control through the initiative and referendum. Under these conditions the legislature approximates the status of the constitutional convention—always consisting of a single house.[35] "Since the people have obtained the referendum power the senate is only an obstruction."[36]

Advocates of the bicameral system have generally insisted it will not serve as a sufficient check against the abuse of legislative power unless the two houses are composed upon different principles. "This check will be most effectually obtained by a coördinate branch of equal authority, and different organization. . . . . If each branch is substantially formed upon the same plan, the advantages of division are shadowy and imaginative . . . . It may be safely asserted that, for all the purposes of liberty, and security, of stable laws and of solid institutions, of personal rights, and of the protection of property, a single branch is quite as good as two, if their composition is the same and their spirits and impulses the same . . . . It will only be a duplication of the evils of oppression and rashness, with a duplication of obstructions to effective redress."[37] European conditions are thus satisfactory in this regard. "In Europe there is always a difference of political complexion generally resting on a difference in personal composition. There the upper chamber represents the aristocracy of the country, or the men of wealth, or the high officials, or the influence of the crown and court; while the lower chamber represents the multitude."[38]

But only "shadowy and imaginative" advantages, from this point of view, can now come in this connection from duplication in our state legislatures. "The two chambers have been so much assimilated to each other in regard to the basis of representation and the term of office, that they have become more

[35] Even where the action of the convention is final there is no division of organization.

[36] Spence and others, *Medford* (Ore.), *Tribune*, October 27, 1914.

[37] Story, *Commentaries*, vol. 1, sec. 699. See also ibid., sec. 554.

[38] Bryce, *American Commonwealth*, ed. 1913, vol. 1, p. 186.

and more like two divisions of the same chamber; except in a few States in New England the conception of the upper house as representing a fiscal or a communal unit has entirely disappeared; manhood suffrage has become all but universal; the age and property qualifications have been swept away; and 'senators' and 'representatives' are distinguishable in little more than name. The state senates are, therefore, no longer regarded, or trusted, as checks upon the houses of representatives."[39] Moreover, both branches of the legislature in all of the States are usually under the control of the same political party.[40]

As a matter of fact the division of the state legislature into two chambers has at no period been a very effective means of preventing the abuse of legislative power. The strongest evidence for this view is the ever-increasing multiplication of constitutional limitations upon the legislature's activity.[41]

The bicameral system has been considered as an obstacle to corrupting influences in the legislature. "Some protection is . . . . . afforded against a sinister combination of private interests to pass measures opposed to the public good; since a combination is at any rate more easily managed in one chamber than in two."[42] But the division of the legislature is well adapted to effect the success of these "sinister combinations." It prevents concentration of the attention of the public upon the operations of their representatives, and gives opportunity to the representatives to evade responsibility for their actions. "The people of Oregon would have better control of their legislature and would obtain better results with a single-house legislature. There would be but one house to watch instead of two. There would be an end to much buffeting and buncombe."[43] "By abolishing the state senate, the people will concentrate responsibility on the representatives alone, and thus destroy the habit of poli-

[39] Morgan, *Contemporary Review*, vol. 97, p. 543 (1910). See also Woodburn, *American Republic*, p. 201, note.

[40] Cf. Munro, *Government of American Cities*, p. 185.

[41] Cf. Morgan, *Contemporary Review*, vol. 97, p. 544 (1910).

[42] Sidgwick, *Elements of Politics*, 2d ed., p. 467. See also Story, *Commentaries*, vol. 1, sec. 556.

[43] *East Oregonian*, May 16, 1914, p. 4, col. 1.

ticians and pledge-breakers of passing a bill in the house and 'killing it in the senate,' of passing a bill in the senate and 'killing it in the house.' "[44] Moreover the complication of the system is an obstacle to the detection of sinister legislation by the representatives themselves. "The more complicated the matter, the greater the number of those who are unable to see clearly into it; and even to those who do see into it with the utmost possible degree of clearness, the greater the mass of time and labor expended on it. But the more complicated it is, the more easy will it be for those who apply themselves to seek a sinister profit to themselves at the expense of the rest of the community, to succeed in such their endeavor, to-wit, by reason of the inability of those whose interests are thus sacrificed—the inability of seeing into and opposing those same mischievous designs."[45]

The same considerations which apply to the division of the legislature as a security against abuses of power by the representatives of the people will apply to the division of the legislature as "a salutary check . . . . . upon the people themselves, against their own temporary delusions and errors."[46]

"The chief advantage of dividing a legislature into two branches is that one may check the haste and correct the mistakes of the

[44] People's Power League, Oregon *Referendum Pamphlet*, 1912, p. 221. "About the only purpose I have ever been able to see for the two-house system is that it enables the legislator to fool his constituents by getting a measure demanded or promised them through his branch of the legislature, and then using every effort to have it killed in the other branch." Hodges, *Governors' Conference Proceedings*, 1913, p. 258.

[45] Bentham, *Works*, Bowring's ed., vol. 9, p. 115.

[46] Story, *Commentaries*, sec. 568. "I see in the greatest number [of the American States] an unreasonable imitation of the usages of England. Instead of merging all the authorities into one, that of the nation, they have established different bodies, a House of Representatives, a council, a governor, because England has a House of Commons, a House of Lords, and a King. They undertake to balance these different authorities, as if the same equilibrium of powers which has been thought necessary to balance the enormous preponderance of royalty could be of any use in republics, founded upon the equality of all the citizens; and as if every article which constitutes different bodies was not a source of divisions. By striving to escape imaginary dangers, they have created real ones." Turgot, in John Adams, *Works*, vol. 4, p. 279. See also Bentham, *Works*, Bowring's ed., vol. 2, p. 307; vol. 4, pp. 425–426; vol. 9, pp. 114–115; Temperly, *Upper Chambers*, pp. 140–141.

other."[47] "Each house, knowing that the propositions which originate in it will be carefully scrutinized by the other, will be rendered more careful, more deliberate, more awake to objections; even its own reputation is at stake before the public; one house cannot be expected to have a very tender regard for the good name of the other, but will be only too ready to find fault with its conclusions."[48] In support of this theory, proceedings in Cromwell's Parliament, the single-chamber French legislatures, the Continental Congress, and the single-chamber legislatures of Pennsylvania and Georgia have been cited to show the necessity of the division of a legislature into two houses to secure deliberate action.[49] But these few examples, taken from remote times and extraordinary conditions, are certainly of very little significance when contrasted with the long and satisfactory experience of the Canadian provinces, the Swiss cantons, and other states with single-chamber legislatures.

However, our bicameral state legislatures have in fact long ceased to be truly deliberative bodies. "The most important function of our early legislatures was deliberation. This has almost entirely disappeared. The rush of the age has invaded the dignified assembly hall, and bills are shot through as by pneumatic pressure. The two most important factors in modern legislation are the lobby and the committee. What deliberation now is granted a measure is given in committee rooms and in private discussion "[50] The loss of deliberative character of our legislative assemblies is due chiefly to the enormous increase of the business submitted for their consideration. Under the present conditions in our legislatures the elimination of one house would reduce the mass of business submitted, approximately in

[47] Bryce, *American Commonwealth*, ed., 1913 vol. 1, p. 185.

[48] Woolsey, *Political Science*, vol. 2, p. 312.

[49] Garner, *Political Science*, pp. 428–429; Kent, *Commentaries*, vol. 1, p. 222. This argument has been much used in Oregon.

[50] Orth, *Atlantic Monthly*, vol. 94, p. 734 (1904). "The good effects ascribed or ascribable to the two-house system, may be resolved into this, namely, its acting as a remedy against precipitation. In this case . . . the alleged good is mere matter of presumption; of actually existing good, not a particle does the observation adduce." Bentham, *Works*, Bowring's ed. vol. 9, p. 116.

proportion to the number of the members of the house eliminated, and thus by that much remove the difficulties in the way of deliberate action.

Indeed the shifting of responsibility for due deliberation, under the present system, by one house upon the other, "the division of labor," at times virtually nullifies the bicameral principle of legislation. "Two considerations do not necessarily mean a double consideration . . . . There is a tendency to assume that a subject has been considered in the other house, when the consideration there has been very inadequate, or some times one house hastily passes a bill, with the expectation that the other house will deal with it more carefully, and so there is frequently a shifting of responsibility from chamber to chamber."[51] "In a two-house legislature each house depends upon the other. Neither house is as careful as if all responsibility rested upon it."[52]

A similar sacrifice of the bicameral principle results at times from the practical delegation of legislative power to conference committees and other joint committees of the legislature.

However, even if the bicameral system operates to some extent as a check upon hasty and ill considered legislation, the check may as often be a detriment to legislation. Delays and deadlocks thus occur, and the progress of reform is thus impeded.[53]

The bicameral system has been defended as a means of introducing "the influence of different interests or different principles"

[51] Hodges, *Governors' Conference Proceedings*, 1913, pp. 259–260.

[52] *Pacific Grange Bulletin*, April 1914, p. 107. "I do not deem it necessary that the members of this house should spend valuable time in discussing this bill. It has been thoroughly gone over in the senate and its provisions have been declared fair and satisfactory to every one concerned." Latourette, Oregon House of Representatives, *Eugene Guard*, February 12, 1913, p. 2, col. 1.

[53] Cf. Amos, *Science of Politics*, p. 239. "The senate checks and kills good measures more often than bad ones. The demand of the age is for efficiency. The people of Oregon want to know *how* to do, instead of *how not* to do." Spence and others, *Oregon Referendum Pamphlet*, 1914, p. 83. *Contra:* "I am convinced that more damage comes from bad bills slipping through than from good bills being killed. In case of the bad bills they will be subject to the referendum, and the good bills cannot be killed, for they will keep coming up until they are passed." Malarkey, quoted in *Oregonian*, March 1, 1914, p. 10, col. 3.

necessary in legislation.[54] "A second chamber exactly reflecting and expressing the voice of the first chamber would be a gross absurdity."[55] The representation of "different interests" was the basis of the ancient assembly of estates, "an organized collection . . . . . of the several orders, states or conditions of men . . . . . recognized as possessing political power."[56] But the prevailing democratic doctrine has long demanded that each chamber of the legislature should represent *all* classes of the State.[57] Indeed should the principles of representation by interests, under modern conditions, be again adopted, its application would be inconsistent with the idea of two houses only.[58] Under present American conditions the only practicable bases for the division of the state legislature into two houses are those of "territory and time." Indeed in many States the distinction of time no longer exists, and the "different principles" are often thus reduced to the differences in area of elective districts,[59] and even these differences do not always exist.

But whatever the "different principles" applied, there is no sound reason why for purposes of deliberation the different principles should be represented in different chambers. "So far as . . . . . [a second chamber] represents a different class of interests or sentiments, it is a pure legislative loss—without any compensating gains—to have one class of interests or views represented at one discussion of a measure and another class at another discussion, instead of having both represented simultaneously to the great gain of the debate and the saving of time, expense and labor. . . . . On behalf . . . . . of effective representation, harmonious coöperation, timely conces-

[54] Jefferson, *Works*, Federal ed., vol. 4, p. 19.

[55] Dunraven, *Nineteenth Cnetury*, vol. 61, pp. 353-354 (1907). See also Story *Commentaries*, vol. 1, sec. 554.

[56] Stubbs, *Constitutional History of England*, vol. 2, ch. 15.

[57] "The senates have survived the real purpose for which they existed under monarchial institutions and the aristocratic and plutocratic tendencies which still lived after the yoke of monarchy was removed." Eastmond, *Shall the People Rule?*, p. 3, reprinted from *Trend Magazine*, February 1913.

[58] Lieber, *Civil Liberty and Self-Government*, ed. 1874, p. 199.

[59] *Senatorial Term, American Law Review*, vol. 4, pp. 18-30 (1869).

sion, apt adjustment, and habitual preference of the more pressing to the less pressing claim—a common discussion in one broadly representative chamber must surpass in value any series of discussions conducted first by persons having exclusively one order of interests and afterwards by those having exclusively another order. When the two alternative courses are contrasted in this way, it seems almost absurd that there should be any doubt as to the side on which the advantage lies. And what is here said of the superior value of having all classes of interests represented simultaneously, instead of successively, applies with no less force to the value of having various modes of thought, prepossession, and habitual standards of opinion, all brought to bear in all the discussions of a measure, instead of having some exclusively recognized and enforced at one period of the discussion and the opposite or different ones exclusively recognized on a quite different occasion when the measure has reached a different stage. Nothing but the actual—and, so to speak, accidental—historical evolution of the British houses of Parliament could have made that appear so natural and familiar which is, in fact, wholly alien to all principles of discussion as recognized in other fields of enquiry, and which can never be part of a permanent political system."[60]

The policy of scattering men apart rather than gathering them together for the purpose of consideration of legislation seems the more absurd in view of the invariable practice in organizing our state constitutional conventions, where the most fundamental provisions of governments are formulated, upon a unicameral basis.

Rather than the revision of the action of one legislative body by another legislative body as a precaution against ill-advised action, there is needed the closer coöperation of the executive and legislative departments in the enactment of law, and the assistance of legislative experts, "legislative librarians" and "bill-drafters," to the legislature of laymen.

[60] Amos, *Science of Politics*, pp. 239–240, 245–246. "Each assembly would be deprived of a part of the knowledge it would have possessed in a state of union. The same reasons are not presented in the two houses with the same force. The arguments which have decided the votes in the one may not be employed in the other." Bentham, *Works*, Bowring's ed., vol. 2, p. 307.

"Whatever is unnecessary in government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to do harm: you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are that it will impede them somewhere, so nice are they and so delicate."[61] From the considerations above it would seem that the division of the American state legislature effects an unnecessary complication in government, at least when checked by direct legislation, and that the complication for the most part results in evil rather than in good.[62] But there are other evils inherent in the bicameral system.

The attainment of any unity of purpose and harmony in legislation, difficult enough under the best conditions, is always likely to be thwarted by the division of legislative authority.[63] The "hold-ups" and "log-rolling" practiced at times between the two houses, and virtually destroying the bicameral principle, are additional reasons for eliminating one of the houses.[64] Moreover, the unnecessary expense entailed by the duplication of legislative bodies is a ground for change, often urged in Oregon.[65]

Positive improvement in the quality of the membership of the legislature would probably result from the concentration of responsibility in a single chamber. "The member of a single-house legislature will feel a great responsibility and a greater pride in his work. It will attract the highest capacity and integrity in the State."[66] Finally, the elimination of one of the houses of the legislature would render much simpler the problem of the reorganization of relations between the executive and the legislative departments of the state governments.

[61] Bagehot, *English Constitution*, p. 175.

[62] "The state senate of the Oregon legislature is a useless when not positively a mischievous body." Resolution of State Grange, *Oregon Journal*, January 22, 1914, p. 3, col. 3.

[63] Cf. Bryce, *American Commonwealth*, Ed. 1913, vol. 1, pp. 185–186.

[64] Cf. Hodges, *Governors' Conference Proceedings*, 1913, p. 259; Spence and others, *Pacific Grange Bulletin*, March 1914, p. 90.

[65] E. g. People's Power League, Oregon *Referendum Pamphlet*, 1912, p. 221; Resolution of State Grange, *Oregon Journal*, January 22, 1914, p. 3, col. 3.

[66] *Pacific Grange Bulletin*, April 1914, p. 107.

THE PRESIDENTIAL PREFERENCE PRIMARY

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The presidency, intended by the framers of the Constitution to be almost exclusively an executive and administrative office, has, in the course of a century and a quarter, not only augmented its executive and administrative authority, but also has acquired a marked political significance. To his constitutional powers the President has added the prerogatives of party leadership, which constitute him the organ for giving effect to the policies of his party at the same time that he exercises a potent influence in the formulation of those policies. The amazing growth of political parties in the United States and the perfection and strength of their organization have been the causes of astonished comment on the part of foreign observers. Moreover, ours has been, in the main, a country of two parties. In view of these facts, the President as party leader becomes a personage of incalculable political consequence. He possesses the political leadership of an English prime minister with the titular dignity which the prime minister lacks.

Since Jackson's time the presidency has achieved a representative character which is the natural result of the President's assumption of political leadership. He perhaps more accurately reflects the mind of the country at large than either of the houses of Congress. The Senate has been wanting in representative character, until the passage of the seventeenth amendment, because of the indirect mode of its election; while the Representatives, because the center of their interests is local rather than national and because their number has been a hindrance to decisive action, have distinctly lost in prestige. The President is able, and finds it to his advantage, to cultivate a nationalistic conception of his office. His position at the head of his party

contributes to this end. The party platform is a statement of national policy. Upon that same platform senatorial and representative candidates make their campaigns. But should the party triumph in the election, the President-elect is the person primarily held responsible for converting the party policies into legislative acts. Furthermore, in the elections held midway between presidential years, representatives and senators base their claims for reëlection upon the alleged fact that they have faithfully supported the President in making good the platform pledges of the party. The safety and solidarity of the party require that they do so. From the President's standpoint, it is imperative that he command the support of his party in fulfilling the promises to which he, personally, as well as the party, is pledged. He must, therefore, work to prevent any disaffection, in order that the party may present an appearance of undivided allegiance to its announced principles. Opposition to the administration program there may be. But picture to the disaffected the danger in party disintegration, and the wisdom of remaining regular becomes apparent to all except the most recalcitrant. Strong in the confidence of popular support, the President may not only force the redemption of all party pledges, but may even secure the enactment of measures to which the party is not at all pledged, or which in its platform it may actually have opposed. In the recent repeal of the coastwise exemption clause of the Panama Canal act, party expediency played as large a part as the moral argument. There is every reason to believe that the measure was carried by the sheer weight of the President's authority and prestige.

The formidable powers of the presidential office are thus set forth in order to emphasize the importance of providing a method of election which will secure the expression of the real choice of the voters with certainty and dispatch. The present method leaves much to be desired in these respects. It was well adapted to the election of the President as he was intended to be by the framers of the Constitution, but not to the election of the President in his present character. The rise and growth of political parties soon made short work of the discretion lodged in the elec-

toral colleges, which now serve only to make the presidential election an affair by States. Strictly speaking, presidential nominations should be certified to the electoral colleges subsequent to the choice of electors by the voters; as things are, the nominations, according to state laws, are certified to the election authorities and the names of the nominees appear upon the ballots at the head of their respective lists of electors. From the very first, in the history of presidential elections, certain individuals have been generally recognized as candidates prior to the time for choosing electors; and from the end of Washington's second administration political parties have put forth their candidates who could be voted for by choosing the appropriate list of electors. The presidential election became, practically speaking, a direct election, and this tendency was assisted, after the unintended result of the election of 1800, by the readjustment of the machinery for the election of President in the twelfth amendment.

Before the year 1800 no recognized method for placing presidential candidates in nomination existed. But as men of like political beliefs drew together in parties and the real character of the presidency as a political prize came to be better appreciated, a method was found ready at hand for the formal nomination of candidates. The members of each party in Congress, who were, in that day, the acknowledged political leaders, assembled in party conclave, chose their respective presidential and vice-presidential candidates, and put forth some form of party declaration. But the masses of the voters were not at all consulted on these occasions, and when the democratic movement had gained sufficient headway, it was found that this method of selecting presidential nominees fell considerably short of democratic ideals. Then, too, that Congress or any part of it should have a direct influence upon the choice of the President was entirely subversive of the cherished principle of the separation of powers. The congressional caucus, therefore, fell into disuse, and, after a short interregnum of spontaneous nominations by state legislatures, was succeeded by the convention system which was speedily adopted as the standard method of party nomination.

The convention as an agency for nominating candidates had already been made use of in States and localities. That it was so readily accepted and has so long endured may be accounted for by the fact that, as a means to secure representative government within the party, it is theoretically defensible. It meets for the purpose of naming party candidates and formulating party policies. Although the delegates are frequently governed by more or less precise instructions, the convention still retains the character of a deliberative body. Its relation to the party corresponds to that of Congress and the state legislatures to the nation and the States respectively, and its representative character appears to be self-evident. A close examination of the history of party conventions, however, leads to a different conclusion. The convention system, as it developed from 1830, was a hierarchy of conventions beginning with the primary meeting, which was the only point of contact with the voters, and culminating in the national convention, the members of which were chosen by state or district conventions, which, in their turn, rested upon county conventions elected by the party voters. As Calhoun wrote in declining to become a presidential candidate before the Democratic Convention at Baltimore in 1844: "Instead, then, of being directly or fresh from the people, the delegates to the Baltimore Convention will be delegates of delegates, and of course removed, in all cases, at least three, if not four degrees from the people. At each successive remove, the voice of the people will become less full and distinct, until, at last, it will be so faint and imperfect as not to be audible."

The objection of Calhoun has been met in a majority of the States by the enactment of laws providing that the election of delegates to county, state, and national conventions shall be direct. This change has undoubtedly improved the standing of conventions as representative bodies, and, in the case of the national convention, has paved the way for the direct expression of preferences for presidential candidates through the informal pledging of delegates to the interests of certain individuals.

But notwithstanding this change to the direct election of convention delegates, the clamor against the party convention has

not ceased to be heard. The adoption of direct primary laws in many States is the result. One need only read the debates on direct primary bills in state legislatures or the decisions of state courts upholding the constitutionality of direct primary laws to become apprised of the case against the convention system. It is alleged that the party committees, which constitute the executive side of the party machinery and which are composed of county or district leaders, are constantly scheming to secure the election of delegates to the conventions upon whom they can count to serve their purposes. Assisted by an army of tributary politicians, beholden to them for favors or in expectation of future rewards, and supported financially by various interests seeking to turn the party organization to their own advantage, they are enabled to pack conventions with supporters upon whom they can confidently rely to do their bidding. Even should they fail to secure a convention whose personnel is exactly of the pliable kind to suit their purposes, the resources of the leaders are by no means exhausted. For a determined coterie of wire pullers to obtain control of the temporary organization of a convention, and, with that advantage, of the permanent organization, is no difficult matter—especially when, as usually happens, their opponents work to no common purpose. A friendly committee on credentials will often ensure organization control by settling a sufficient number of contests in favor of the organization contestants. When it is considered how little attention is paid by voters to the election of delegates to nominating conventions and how little an understanding the average voter has of the procedure of a convention, one does not wonder that the unscrupulous and clever politician succeeds so well.

The national convention, it is contended, is just as susceptible of organization control as conventions lower down in the scale. The assertion that conventions are packed with persons, too often attached by bonds of self-interest to the destinies of the organization, is held to be equally true of the national convention. In exercising the prerogatives of making up a temporary roll of the convention and of naming the temporary chairman, it is declared that the national committee possesses exceptional advan-

tages for control. The delegates who are temporarily seated are the ones who determine the personnel of the committees and especially of the strategically important committee on credentials. Considering the manner in which that committee is constituted, it is altogether likely that its report will be a mere ratification of the temporary roll. Upon this committee, in the Republican national committee of 1912, were found members whose seats were contested, representatives of delegations whose seats were contested, and even members of the national committee who had assisted in the preliminary decision of contests. The acceptance or rejection of the report of the committee on credentials depends upon the votes of delegates whose names are on the temporary roll. Thus the unedifying spectacle is unfolded of delegates passing upon their own credentials—assisting by their own votes to seat themselves. It is thus seen that the key to the control of the national convention is found in the control of the national committee, a body whose members are holdovers from the preceding national convention. It should be added that control by a national committee is greatly facilitated by the existence of a large number of delegates who are elected by numerically insignificant constituencies and constitute easily manipulated pawns in the political game.

The inequitable basis upon which the national convention rests has been the most telling criticism urged against it. As long ago as 1864 an effort was made in the Republican national convention to secure a re-apportionment of delegates. Other plans were submitted in 1884, 1900, 1908, and 1912. The controlling party organizations, however, have never seemed willing to surrender the advantages which they derive from the inequity of the system of representation and the demand for readjustment has not until recently been particularly strong or insistent. Since 1912, certain definite, though on the whole unsatisfactory, proposals for reform have issued from the Republican national committee. An abundance of figures are available to prove the case against the present system. The principle, however, upon which the States are represented in party national conventions is so wrong that numerical proof seems hardly necessary. It will

suffice to point out that the fifteen States, including Arizona and New Mexico, from which there was small prospect of a single Republican electoral vote being returned, were entitled in the Republican national convention of 1912 to two hundred and fifty delegates.

Yet another indictment lies against the national convention which, its critics declare, argues conclusively for congressional regulation. Those state laws which have extended their regulatory power over political party machinery, have included within their scope the election of delegates to national conventions. Usually state legislation has accommodated itself to the mode of distribution of delegates prescribed by the national party committees, viz., that two delegates shall be elected from each congressional district and four in the State at large. Two States, however, California and South Dakota, have provided by law for the election of all of the delegates, to which they are entitled, at large. In 1912 the presidential primary in California resulted in the election of that ticket of twenty-six delegates, which had officially certified its adherence to the candidacy of Colonel Theodore Roosevelt. In the fourth congressional district, two delegates belonging to the group pledged to Mr. Taft and residing in that district, were alleged to have secured a majority of votes over two candidates of the Roosevelt group, residents of the same district. This allegation was denied and some evidence brought to support the denial, but the national committee and later the committee on credentials, basing their decision upon the rule for distribution of delegates prescribed by the Republican party, held that the delegates representing Mr. Taft were entitled to the two seats. In so acting, the committee overruled the law of California in accordance with which the whole of the Roosevelt ticket was legally elected. The State of California was clearly within its legal rights but it could not compel the national convention, a body unknown to the Constitution and laws of the United States, to admit delegates elected under its laws. Undoubtedly the convention may admit or cast out whatsoever delegates it pleases, the laws of any State to the contrary notwithstanding. The question readily occurs to one—should a

body be permitted to exercise functions, so fraught with consequences to the welfare of the whole country, without legal responsibility of some kind?

The Democratic national committee and convention were more considerate of the feelings of States. The law of South Dakota is similar to that of California. It provides that candidates for delegate may have their names placed upon the ballot in groups under a caption of five words for each group. Accordingly, a group calling itself the "Wilson-Bryan Progressive Democracy" filed its nomination petition. This was followed by another group under the non-committal title "Wilson-Bryan-Clark Democracy." Still another group made its entry with the motto "Champ Clark for President." The second group of candidates, upon being pressed to declare its presidential preference, avowed its support of Mr. Champ Clark. The election result gave the "Wilson-Bryan Progressive Democracy" ticket 4670 votes; the "Wilson-Bryan-Clark" ticket, 4230 votes; and the avowed Clark ticket, 2700 votes. The state canvassing board, composed of the governor, secretary of state, auditor, attorney-general, and one judge of the supreme court, acting strictly according to the law of the State, gave certificates of election to the first-named ticket, but the chairman of the Democratic state committee, asserting that the Democrats of the State had clearly declared for Mr. Clark, added the votes of tickets number two and three together and gave certificates to the delegates of ticket number two. As a result two contesting delegations from South Dakota appeared at the Democratic national convention. The Democratic national committee in making up the temporary roll, decided for the "Wilson-Bryan-Progressive Democracy" and thus upheld the law of South Dakota. The committee on credentials, however, accepted the certificates of the state Democratic chairman and voted to seat the delegates of list number two. An appeal having been taken from this decision through a minority report, the convention voted to sustain the national committee and admit the delegates certified by the board of canvassers of South Dakota as having been legally elected. The argument urged on one side was "give effect to the will of the people;" on the other,

"sustain the law of the sovereign State of South Dakota." The Democratic party with its traditional respect for the sovereignty of States, accepted the latter alternative.[1] Yet there was no law save its own will to govern the Democratic national convention in deciding this case. At another time and place it may reverse its decision, and thus make its irresponsibility equally obvious with that of the Republican convention of 1912.[2]

The defects of the national nominating conventions, noted above, are receiving general and serious attention and there seems to be no doubt but that the general current of dissatisfaction will produce some changes in our system of nominating candidates for the presidency and vice-presidency. The reason for the downfall of the convention system in many States and the apparent failure of the national convention lies in the nature of political parties. That the invariable tendency of political parties is to seek first their own interests as organizations and that adequate checks must be provided to counteract this tendency, are facts which in American political history have not been sufficiently recognized. The temptation of the political party is to view organization as an end in itself. As a result the party will no longer exist as an organ for facilitating the expression of public opinion, but will become chiefly interested in offices and spoils. To the end that it may become more efficient in realizing these latter purposes, the party organization tends to become centralized and to fall under the control of a limited number of able leaders who sacrifice a great deal in principle to attain the greatest strength and highest perfection in organization. The obvious remedy is to bring the party organization, as much as possible under the direct control of the party voters. This is the present tendency in many States where the formula of direct government produces the direct nomination of all officers. Sooner or later the same formula will be applied to the nomination of President and Vice-President. Already bills, providing complete machinery for holding a nation-wide presidential primary, have been introduced in both houses of Congress and the present adminis-

[1] *Proceedings, Democratic national convention* (1912), pp. 87–94.
[2] *Proceedings, Republican national convention* (1912), pp. 199–219.

tration is strongly disposed in favor of such legislation. The national nominating primary is supported by the arguments urged for the direct primary in the States, because the evils to be combatted are fundamentally the same. If the national convention is not to be superseded as a nominating body, its supporters must put forth decided efforts to meet the criticisms levelled at its unrepresentative character. It is not here contended that the national convention cannot be revised, in its organization, in such a way as to fully meet these criticisms. The immediate question rather is: Can this revision be accomplished from within the parties?

Before attacking the problem of a national nominating primary, it would be well to remember that during the last ten years more than a third of the States have passed laws whose object is to enable the party voters to express a direct preference among presidential candidates. The instruction of state delegations and the informal pledging of delegates to the interests of presidential candidates are practices which have long existed. The state legislation to be now described, incorporates the principle of delegate instruction in state laws.

Eighteen States have made provision in some form for a presidential preference vote or the election of pledged delegates, or both together. The degree of directness with which the preference is expressed and the measure of certainty of its being carried into effect vary considerably from State to State. One group of States provides for the direct election of delegates to the national convention, but either permits or requires that persons shall become candidates for the position of delegate under the aegis of some duly certified presidential aspirant. In the laws of California and South Dakota, which are alike in their general features, a number of candidates equal to the number of delegates to which the State is entitled, are permitted to file a nominating petition as a group, pledged to the interest of a given candidate for President. The names of the group members are placed on the ballot together and the voter may, by the use of one mark, cast his ballot for the entire group at once, as in voting for presidential electors. In South Dakota, as we have already

found, the candidates for delegate may file their names together under a title of not more than five words. The California law provides that before a group may be placed on the ballot, it must first appear that not less than one or more than three of the persons within the group reside in the same congressional district, and secondly, that the group has the endorsement of the presidential candidate whose cause it has espoused, or of a state organization which possesses his confidence. The States of Illinois, New Jersey, New Hampshire, and Ohio, in contrast to the States of California, and South Dakota, have adopted the congressional district as the unit for electing delegates. Thus, in the recent Illinois act, the candidate for delegate is required to file with his nomination petition a statement of his choice for President or the statement that he has no choice. On the official primary ballot there is printed beneath the name of each candidate the name of his presidential preference or the fact that he has none. The Ohio law differs from that of Illinois in two respects. It requires the candidate for delegate to file his first and second choices for President which will be printed beneath his name upon the ballot, but as an alternative, he may file the statement that he will, if elected, support the candidate for President who receives the majority of the preference votes. By the New Jersey law, the candidates for delegate or alternate may have their names printed together upon the ballot under the name of their candidate for President or they may have his name printed opposite theirs in a column headed "Choice for President." New Hampshire simply permits the candidates for delegate or delegate-at-large to pledge themselves, if elected, to vote for a given candidate for President in the national convention, as long as his name shall remain before the convention.

In a second group of States the voters are permitted to express a direct choice among the presidential candidates which may be made binding upon the delegates elected at the same time. In Oregon and Montana the delegates for the national convention are elected at large, but in order to secure minority representation, each voter is permitted to cast his ballot for one person only as delegate. Those candidates receiving the largest number of

votes, to the number of the delegates to which the State is entitled, are declared elected. At the same time a direct presidential preference vote is held and the candidates for delegate are bound by oath to abide by the people's choice. In Michigan the law declares that the candidate who receives a plurality of the preference votes of the State shall be considered the State party choice for President. In Pennsylvania and North Dakota the delegates are bound by the result of the preference vote which accompanies the delegate election. The laws of Massachusetts, Minnesota, Nebraska, Texas, and Wisconsin, do not make the result of the preference vote binding upon the delegates. Thus in these States whether delegates will be chosen who will be in sympathy with the expression of choice by the voters is a matter of uncertainty. On the official ballot in Iowa appear the names of candidates for President and Vice-President, party national committeemen, delegates-at-large, district delegates, and alternate delegates-at-large and district delegates. In addition, the voter is asked to answer yes or no to the following questions: "Shall the district delegates to the national convention be instructed by the vote of the State at large?" and "Shall the district delegates to the national convention be instructed by the vote of the congressional districts?" This is a recognition of the difficulty which ensues when the result of the state-wide preference and the result of the district delegate elections are opposed to each other.

The law of Maryland is the only one which combines a preference vote with an election of delegates by a state convention. In the state convention each county delegation must vote according to the instruction of the voters of that county as long as the candidate for whom they are instructed has the support of nine counties, the legislative districts of Baltimore being reckoned as counties. The presidential candidate who receives the votes of a majority of all the delegates becomes the choice of the state party and must be supported by the state delegation in the national convention.

Summarizing the above described state laws in as brief a manner as possible, we find that in four States, California, Illinois,

New Hampshire, and South Dakota, the choice for President is indicated only through the election of delegates; in twelve States, Iowa, Massachusetts, Maryland, Michigan, Minnesota, Montana, North Dakota, New Jersey, Ohio, Oregon, Pennsylvania, Texas, and Wisconsin, the choice is expressed through direct preference primaries; in eleven States, California, Illinois, Maryland, Michigan, Montana, North Dakota, New Jersey, Ohio, Pennsylvania, and Oregon, the choice thus expressed is made binding upon the delegates elected at the same time; in four States, California, Montana, Oregon, and South Dakota, the delegates are all elected at large; and in one State, Maryland, the delegates are elected by the state party conventions. Little attention need be given to the details of the presidential primary laws. A majority of them are mandatory and, as we have ascertained, in a majority the delegates are under obligation to abide by the voters' preference. As presidential primaries are held under the regular primary election laws of States, it is necessary for candidates for delegate to file nominating papers in order to have their names placed upon the ballot. In all save two States, candidates for the presidency are required, either personally, or through state organizations authorized by them, to file petitions signed by a certain percentage of their party supporters within the State. All except five of the States provide for the election of delegates in congressional districts, while the delegates-at-large are chosen by the voters directly in all of the States under consideration except Maryland and Illinois.

As a permanent and satisfactory method of arriving at a popular choice for presidential nominations, the state presidential primaries leave much to be desired. A general and thorough adoption of the principle of delegate instruction must be secured in order to produce a satisfactory result and this would make of the national conventions mere ratifying bodies like the electoral colleges. In so far as the practice of sending pledged delegates to the national conventions is not general it will be open to serious objection. A national convention composed of delegates of whom half are under instruction and half free to act at discretion can result in no satisfactory nomination for President; for, should

the candidate who is the choice of the instructed delegates be defeated by the votes of those who are not bound by instructions, the cry would immediately be raised, and with justification, that the convention had disregarded the will of the voters of the party.

The unstable character of some of the legislation upon this subject was revealed in the fierce factional contests of 1912. In Massachusetts where the district delegates and delegates-at-large are chosen by the voters, Mr. Taft secured a majority of the district delegates, but, on account of a tactical mistake of the Taft voters in dispersing their votes among a greater number of candidates than there were delegates to be elected, the Taft party lost the delegates-at-large. As the result of the state-wide preference vote was in favor of Mr. Taft, the delegates-at-large clearly belonged to him. In certain congressional districts the preference vote resulted in favor of Mr. Roosevelt, yet the delegates elected were adverse to his interest.

In Ohio peculiar situations arose in the primaries of both parties. The Ohio law at that time provided for the election of district delegates by the party voters and for the election of the delegates-at-large by the respective state conventions. A presidential preference vote could be held at the option of the party committee. In the Republican primaries a substantial majority of the delegates chosen were pledged to Mr. Roosevelt, but the supporters of Mr. Taft managed to secure just sufficient votes in the state convention to elect the six delegates-at-large. This result was obtained because delegations from certain counties which had elected Roosevelt delegates to the national convention, refused to consider themselves bound by that decision in voting for delegates-at-large, and acted according to their own predilections. No preference vote was held, but the vote for delegates showed a majority sentiment on the face of the returns for Mr. Roosevelt. In justice, therefore, the delegates-at-large should have been instructed for him. In accomplishing the object of electing delegates who would express the will of the voters, the Ohio law proved in this case to be inadequate.

The Democratic party in Ohio elected to hold a preference vote as a result of which Mr. Judson Harmon carried the State by

about 10,000 plurality. There were, however, some fourteen Wilson delegates elected, and it was stated by a prominent Ohio Democrat on the floor of the national convention that in certain congressional districts where the result of the preference vote favored Mr. Harmon, the delegates elected were pledged to Mr. Wilson. The Democratic state convention proved to be overwhelmingly for Mr. Harmon, and not only elected Harmon instructed delegates-at-large, but attempted, in accordance with the unit rule, to bind all of the district delegates to vote for Mr. Harmon as long as his name remained before the national convention. On the second day of the Democratic national convention, Mr. Robert L. Henry, of Texas, presented a minority report from the committee on rules, to the following effect: "Resolved, that in casting votes on a call of the States, the chair shall recognize and enforce a unit rule enacted by a state convention, except in such States as have, by mandatory statute, provided for the nomination and election of delegates and alternates to national political conventions in congressional districts and have not subjected delegates, so selected, to the authority of the state committee or convention of the party, in which case no such rule shall be held to apply."[3] After prolonged discussion, this rule was adopted, and since the law of Ohio did not subject the district delegates to the authority of the state committee or convention, the action taken by the Ohio Democratic convention was in effect set aside.

In the Oregon primary of 1912, the Republican preference vote went in favor of Mr. Roosevelt but the majority of the delegates were sympathizers with Mr. Taft. As at an earlier date a Republican legislature in Oregon was obliged, under the senatorial preference law, to elect a Democrat as United States senator, so in the Republican national convention of 1912 the Taft delegates from Oregon were legally bound to cast their votes for Mr. Roosevelt as presidential nominee, but on every other vital question they assisted with their votes the cause of Mr. Taft.

[3] *Proceedings, Democratic national convention* (1912), pp. 59–78.

The foregoing evidence warrants the conclusion that, in the States under consideration, the laws of 1912 did not make it certain either that the verdict of the voters in selecting delegates to the national convention would correspond to the result of the preference vote, or that the delegates-at-large would be bound to abide by the preference vote. It is doubtful, indeed, if such a result can be assured when the preference is given in the State at large and the delegates are elected by districts. In Ohio, for example, where, under the present law, each candidate for the position of delegate to the national convention must formally make known his first and second choices for the presidency and have the names of these choices printed in connection with his own upon the ballot, it is quite possible that the result may be the election of delegates, a majority of whom will be out of sympathy with the result of the state-wide preference vote. Definite and satisfactory results may be obtained either by the California method of electing one of two or more contesting groups of delegates who are each pledged to their presidential candidates, or by the Illinois plan, which provides that the delegates shall be elected in congressional districts and that each delegate shall be pledged in advance to the support of a given presidential candidate, whose name shall appear beneath his own upon the ballot. Here no state-wide preference vote is provided for, nor is one necessary. If the congressional district is to be adopted as the unit for the election of delegates to the national convention, it should also be the unit for the expression of a presidential preference. Likewise, if the State is to be the unit, the expression of the presidential preference should be state-wide. It will be found that the imperfections revealed in state presidential preference primary laws arise from the attempt to use the congressional district as the unit for one purpose and the State as the unit for another.

The election of delegates-at-large by state conventions or by the voters on a general ticket is liable to all the uncertainties just described. The supporters of a given presidential candidate who wins a round majority of the district delegates may find themselves entirely checkmated by a state convention, controlled

perhaps by the regular organization, with all the advantages which a regular organization usually possesses. A general vote of the State on delegates-at-large, introduces confusion by the use of two units for the election of delegates when only one is necessary, and is open to the objections urged above against a state-wide preference vote with election of delegates in districts. The delegates-at-large are in fact superfluous and should be abolished. A convention relieved of the delegate-at-large element might well be a more representative and a more independent body.

The capital objection to the state presidential primary laws is their diversity. Practical uniformity exists among the States in respect to the appointment of Electors. The same uniformity should obtain in the nomination of presidential candidates. State primary laws present many points of difference. Contrast for example the laws of California and Illinois. In the former all the delegates to the national convention are elected at large and the intention of the law is that the entire support of the delegates of the State shall be thrown to the presidential candidate who can muster the most votes. In the latter State, the delegates, excepting the delegates-at-large, which are chosen by the state convention, are elected in congressional districts and the state delegation may thus be more or less evenly divided among the candidates for President. Again, in certain states the laws may allow a more direct and definite expression of preference than in others. Indeed, as we have found from our survey of state laws upon this subject, the result in a State of the election of delegates may give extremely vague indications or none at all of the choice of the voters for President. In about two-thirds of the States, the laws do not contemplate any party plebiscite on the question of presidential candidates. In such States, in the absence of proper laws, the preferences of the voters for President can only be expressed by irregular and extra-legal methods. The soap-box primary, about which we heard so much in 1912, must be brought into requisition.

Yet another source of difference among the States lies in the nature of the direct primary laws, which govern in presidential

preference elections. In some States, what is known as the closed primary has been adopted. The intent of this type of primary laws is to sharply define party lines and oblige voters to identify themselves more or less permanently with one party or the other. The voter is generally obliged to participate in the primary of that party whose ticket he last supported at the polls, or the party in which he enrolled at the last registration, although the last election may have been of purely intra-state interest. As a result, any disposition of voters to keep their national and state politics separate is discouraged. In other States, however, the laws provide for open primaries, which admit voters to participation in primaries of whichever party they choose, irrespective of their previous allegiance. It was charged in 1912 that in one or two of such States, voters of one party voted designedly in the primary of the other in order to bring about a result favorable to the interests of their own party. It seems clear that the presidential primary should be a partisan primary, conducted without regard to state party affiliations. That the tests of party membership should differ so radically among the States, and that identification with a party in national affairs should be determined by criterions of purely intra-state interest are factors adverse to the success and usefulness of state presidential primary laws.

Assuming that state laws fail to satisfy the requirements of a direct presidential preference primary, is it possible to attain the same object through congressional legislation? The constitutional objection immediately arises. In Article II, Section 1, of the Constitution, occur these words: "Each State shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector." From this it appears that the Constitution leaves the mode of choosing the electors entirely to the determination of the state legislatures. Since the electoral colleges acting in their own discretion, were expected to choose the President and Vice-Presi-

dent, no reference is made in the Constitution to the nomination of candidates. The rise of political parties and the general introduction of the popular choice of electors have converted the presidential election into a direct election by the voters of the nation. Consequently, the formal nomination of party candidates prior to the time for the choosing of electors has become the rule. Is there any way by which the Constitution may be interpreted to accord with these facts? The Constitution, in numerous instances, has been extended to cover eventualities which the framers could not have foreseen. But in such instances, it has been possible to derive the necessary powers by reasonable implication from some power which is conferred in specific terms. In the present case, however, we can find no power conferred upon Congress from which can be derived the authority to pass a presidential nominating law, because in no place in the Constitution is the Congress granted any authority over the process of electing the President prior to the counting of the electoral votes, save that it may "determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States." In state courts the enactment of direct primary laws has generally been upheld as an exercise of the police power, but the Federal government possesses no inherent general police power. That which it does possess may be exercised only in pursuance of its definitely enumerated powers, and, as we have ascertained, there is no such grant of power to Congress concerning the choice of President, save in respect to the designation of the day for the choice of electors.

Furthermore, there is evidence of the most direct kind that the framers of the Constitution intended to exclude Congress, except in the last resort, from any participation in or influence upon the presidential election. Naturally, therefore, no power to legislate with respect to it was granted. The proposition to confer upon the national legislature the function of electing the President and Vice-President was successfully resisted because of the indispensable necessity recognized of keeping the executive independent of the legislative branch. For this reason, senators and

representatives are prohibited from serving as presidential electors and, should the election of President fall to the House of Representatives through the lack of a majority in the electoral colleges, the choice of the House is jealously limited to "the persons having the highest number not exceeding three on the list of those voted for as President." Charles Cotesworth Pinckney in a debate in the House over an electoral count bill in 1800 said: "I well remember it was the object to give to Congress no interference in or control over the election of the President."[4] This should be the best of evidence, as Pinckney was a prominent member of the convention of 1787 which framed the Constitution.

It is not intended that the foregoing citations shall constitute any argument against conferring upon Congress by constitutional amendment the power to legislate upon the subject of presidential nomination. That Congress in passing a presidential primary act would be unduly controlling or interfering with the election of the President, no one will today aver. The conclusion is unavoidable, however, that the Constitution as it came from its framers affords no authority for the passage of such an act, and furthermore that there is no power specifically conferred from which the necessary authority can be derived. This being the state of the case, two courses of action are open: either to amend the Constitution, or if that should seem not at present feasible, to secure the enactment by state legislatures of a uniform presidential primary act. In conclusion a rough sketch of such an act is attempted in the form of a series of proposals.

I. A uniform presidential primary law should be complete in itself in order to obviate the necessity of reconciling its provisions with state laws in respect to registration, direct primaries, and general elections.

II. The proposed uniform law should accommodate itself to the mode of distribution and apportionment of delegates provided for by the rules of the two great party conventions.

III. For the election of delegates and the expression of presidential preference the congressional district should be adopted as the unit.

[4] Quoted by Dougherty, *The electoral system of the United States*, p. 66.

IV. The name of each candidate for delegate should appear on the ballot with the name of the presidential candidate whom he is pledged to support, printed in connection with his own.

V. The delegates-at-large, should there be any, should be elected by the voters of the State at large subject to the conditions laid down in IV.

VI. Presidential primaries in all of the States should be held upon the same day, two or three weeks before the national conventions.

VII. A reasonable amount should be appropriated out of the state treasury to pay the expenses incurred by the delegates in attending the national conventions.

REFERENCES TO STATE PRESIDENTIAL PRIMARY LAWS

California, Laws of, 1911, ch. 18.
Illinois, Laws of, 1913, p. 310.
Iowa, Laws of, 1913, p. 99.
Maryland, Acts of, 1912, ch. 134.
Massachusetts, Acts and Resolves, 1913, pp. 996–7.
Michigan, Howell's Michigan Statutes, s. 562–7.
Minnesota, Laws of, 1913, p. 654.
Montana, Laws of, 1913, p. 590.
Nebraska, Revised Statutes, 1913, s. 2145–6.
New Hampshire, Acts of, 1913, p. 711.
New Jersey, Laws of, 1913, ch. 183.
North Dakota, Laws of, 1911, ch. 208.
Ohio, Laws of, 1913, p. 478.
Oregon, General Laws, 1911, pp. 20–21.
Pennsylvania, Laws of, 1913, p. 719.
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SCIENTIFIC MANAGEMENT OF THE PUBLIC BUSINESS[1]

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The evolution of business organization is from the unsystematized through the systematized to the scientific. Governmental work—federal, state and municipal—is still almost exclusively in the unsystematized stage.

Among the causes of municipal inefficiency are the attempt to hamper and control the action of individuals by a multiplicity of petty restrictions unknown in private business, and the separation of the municipal service into scores of divisions with little or no mutuality of interest. Both of these practices tend to prevent group action in the large sense. But undoubtedly the greatest bar to efficiency is the unwillingness to trust the individual as shown by the attempt to thwart evil or selfish designs of the official by board control. This committee management is in my opinion, the most costly hallucination of democracy. As a present day cause of expensive and inefficient government, this bulwark of the stand patter, of special privilege, of the politician and of the crook makes other influences tending in the same direction such as the complacency of civil service and the lack of definite standards, seem almost negligible.

It requires some optimism to argue against committee management before an audience largely made up of representatives of the colleges. For in the college world the committee is largely looked upon as the guarantee of democracy, and is the principal safeguard against the encroachments of the dean, the department head and the president. I discussed this mechanism of management at some length in *Academic and Industrial Efficiency*, a report to the Carnegie Foundation. Bad as I consider com-

[1] A paper read at the eleventh annual meeting of the American Political Science Association.

mittee control in our colleges, it is even more harmful in the conduct of cities, states and nations. The average man who sits on a college committee has some basis of fact for his action and his vote. On municipal committees the fact basis is usually missing. The fewer his facts the more eager is the committee member to vote. Owing to the standing given to it by the law, the majority vote of a governmental committee is given about as much weight when it is in line with the facts as when it is opposed by the facts. It is impossible for the people to select by vote those with the necessary fact equipment for any given task. This is not a pessimistic remark. It is only saying that a board of directors cannot intelligently vote on the details of a wage scale or the selling prices for a line of goods. These are questions to be determined by the administrative officials after a study of the facts.

Perhaps the most hopeful signs on the municipal horizon are the growing popularity of the commission form of government and the more recent appointment of city managers in a number of cities. By reducing the size of the legislative branch say to five members, the number of matters which it is humanly possible to consider is minimized. Then again the assignment of a large part of the administrative work to the individual member as is the practice of most commissions, does take a large part of the municipal activity entirely outside the field of the vote.

An appointive city manager holding office during good conduct and satisfactory service seems to still further build up the territory over which facts rather than votes and individual opinion determine action. It is probable that in most cities—all except the largest—the best commissioners for some years to come will be those who do not give up all their time to the city service. Without a city manager to relieve the commission of all the work that can be organized on a fact basis, no five men even in a moderate sized city could possibly cover the ground unless they are able to give up all their time to the work.

Two entirely different types of men are wanted as executives and as directors. Louis D. Brandeis speaking at the recent conference of American mayors in Philadelphia described the func-

tion of the board of directors and the administrative official as follows:

"Obviously the only justification for the director's existence is that he should direct; which means that he should be an absolutely fair and intelligent adviser and critic of the enterprise. The men who are in charge of an enterprise as executive officers are supposed to manage, and to possess the required energy and determination to go forward. But in a well equipped organization there should be men who will check up the manager's judgment and performance. Only in this way can continued prosperity be assured.

"For the proper exercise of the functions of the director, it is essential that he be disinterested; that is, be free from any conflicting interest. But it is also essential that he have knowledge. Facts, facts, facts, are the only basis on which he can properly exercise his judgment. It is as necessary that he know intimately the facts concerning the business, as that he have only one interest to subserve. Now, no man can have such detailed knowledge of the facts of many enterprises. This is due to the limitations of time and place and to those other limits set by nature upon human intelligence."

The application of these principles to the control of the affairs of a city would appear to be that the legislative body—whether a commission in form or not should confine its attention to large matters and questions of general policy and avoid wherever possible taking up details. The truth of the matter is that most municipal governing boards are so loaded up with details—many of them urgent—that time does not afford for the discussion of large questions of policy—especially those with a long look ahead. Anything that can wait does wait. The next generation always has difficulty in getting its claims heard.

The next requirement for a city ready to take up seriously the question of scientific management would appear to be a modern charter involving the largest measure of home rule and the smallest number of state-imposed checks. In the case of my own city even reasonably efficient government cannot be brought about until by state enactment the city and county of Philadel-

phia is given authority to consolidate or do away with unnecessary offices and to readjust and keep on readjusing the relations of those that are left. In other words we have outgrown the idea that an industrial or governmental organization can remain to all intents and purposes unchanged during a term of years. If there is to be progress there must be a constant reforming of its lines to meet new conditions and in order to undertake the new work of an advancing civilization.

We need to be constantly reminded that the machinery of government is not the object of government. The first question to be asked in the process of properly organizing an industry is "What is the product—what are you trying to make?" In the case of a municipality the budget, methods of road building, and even the educational system are not the products, but the means to it. The well-being of all the people is the product and nothing short of this. If we see the future aright the electorate is going to demand that this well-being be promoted and safeguarded by agencies—educational, recreational, even spiritual—that are not now dreamed of as essential to the conduct of city, state and nation.

The economic fact which is going to force good municipal government—even scientific management in city affairs—is the growing cost of the undertaking. As our population gathers in larger and larger urban units, and as the population demands that we shall perform collectively functions which formerly when performed were performed by individuals, the expenses of operating and maintaining a city grow by leaps and bounds. The complexity of governmental action increases even more rapidly than does the size of the field over which it operates. It is only because we do not have the figures which represent the difficulty of the task ahead of us that we are not appalled by it.

No discussion of the causes that make for efficiency and inefficiency in our municipalities would be complete that does not mention the public service corporations. That they have lain for a generation like a cancerous growth at the very heart of this problem in practically every American city is only too true. That our people have decided that they are to be controlled—

regulated if you like—seems certain. The weakness of the situation is that for the most part the men who really control these properties are either unable to see any other viewpoint than their own, or are fearful to throw the cards on the table. This situation is fraught with danger. For the average American city to launch forth on an extensive program of municipal operation at this time would appear to be diverting into new fields energies already burdened to the breaking point. My own feeling is that whenever approximately fair treatment in rates and service can be secured from a public service corporation a city would be well advised if it refused—certainly to operate, possibly even to take over the ownership—of utilities not already so owned or operated. Ultimate universal public ownership and probably universal public operation of all municipal utilities seems as sure as anything can be. But the further study of the municipal activities now carried on is a task amply large for most of our cities. Of course if a public utility company refuses to be honest or frank or efficient or accommodating, no self-respecting community will halt a moment in meeting any new responsibility which such a condition may impose. There is no middle course between thoroughly satisfactory operation of a utility by some one else and operating it yourself.

The statement for municipal ownership and operation could be made much stronger than this. There is absolutely nothing in the municipal situation which necessarily implies that private operation can produce lower rates or better service. My thought is only that the field of civic activities being overwhelmingly big, we on the public side should seek to develop what we have under our care rather than add to it in any way that can be avoided. It may be added that private companies, both utility and industrial, are in the same position as far as the possibilities of progress in method are concerned.

It has been a generation since we heard the first rumble of the artillery in the battle for an intelligent and intelligible budget. Even so we have not yet heard—so far as I know—a single word about probably the most important phase of the subject, i.e., the effect of the budget upon cost keeping. This of course re-

minds us that cost keeping, a most important phase of the work of most industrial establishments, has not even started as a feature of our governmental activities.

Permanency of progress has usually come about through wide dissemination. In other words a change in type is not likely to endure unless a large number of individuals have been affected. Usually also the individuals affected must be widely distributed if the change is to be permanent. Put in a different way, the permanency of any change affecting a type is proportional to the number of individuals upon whom the change has been made effective and the breadth of their distribution.

In the minds of those interested in effecting changes in governmental agencies the conditions which bring about permanency are almost always confused with the causes which bring about progress. We find the same thing true in the industrial world. Most people consider that progress can only be brought about through moving the mass. Those familiar with the scientific management movement have been impressed with the way in which during the last generation the work of half a dozen manufacturing establishments, none of them very large, has fundamentally affected industrial methods all over the world. Taylor's work principally at Midvale, Bethlehem and at two or three other places has resulted in giving birth to what appears to some of us to be the greatest single force operating in the industrial world today. The same result can be brought about in municipal administration. What the problem needs is intensive study and intensive development at a few points with proper publicity.

If, for instance, there could be found one city of say 100,000 population where the electorate would allow itself to be guided in such a study for a period of say five years—preferably ten—it would do more to put municipal administration in this country on a scientific basis than could be accomplished by the usual methods of reform operating in a thousand communities.

The point I want to make is this—that the improvements brought about through the routine operation of honest, unsystematized management, working through two generations in a

large number of cities would be meager as compared with what might be accomplished in a few years through more intensive application of science in management at a few points—perhaps in a single city.

The securing of permanency for the results so obtained is an entirely different problem. However, to secure permanency for good results, especially in government, and especially in this country, is a much easier problem than it has ever been before.

The principles of scientific management are the same whether considered in their application to an industry or to a governmental unit.

First. *The development of a science for each element of the work.* Among the varied activities of a city there is the opportunity for literally thousands of such independent inquiries, each resulting in the assembly of data and the development of laws as varied and comprehensive as can be found in any other field.

Second. *The selection and training of employees.* Surely no one will claim that in the hit and miss present day method, largely dominated as it is by politics, can be discovered even the basis of a scientific system of choosing and developing a staff.

Third. *The bringing together of the science and the properly selected and trained employee.* All our governmental work is now done under a minimum of supervision and control, and until this can be amplified and standardized the work will continue to be carried on in a wasteful manner.

Fourth. *A revision of the responsibility as between the management and the men.* Notwithstanding the responsibility supposed to rest with those holding the higher positions, they assume a far smaller proportion of the actual responsibility than they should. True in the industrial world, it is even more general in government work because of the shifting brought about by changes in administration.

The foregoing is a brief statement of the whole theory of scientific management. That these principles—enunciated by Taylor—can be applied to city work as they have been applied to scores of different kinds of industrial work is to me only too

obvious. It opens up a field of endeavor which staggers the imagination.

Perhaps the statement is warranted that almost every mechanism we have in our public works departments today will be superseded within a comparatively few years. The same is true as to processes and methods of doing work. Nothing has been so sufficiently studied as to have reached even an approximately scientific standard. All that can be said is that we have started on the long road. Taylor took twenty-six years to study those laws of cutting metals which were finally reduced to a slide rule which answers questions as to feed and speed. Examine the mechanisms in use for cleaning streets in even Washington, D. C., the cleanest city in the United States. Look at the surface of the streets we clean. Study the attitude of the public which overloads its dump carts, brushes store and sidewalk sweepings into the street and tolerates the open waste can. Continue your observations in such matters as snow and garbage removal, the elimination of insect pests, the regulation of utilities, the building of roads and highways, the distribution of water, our municipal music and our recreational methods and a thousand and one other activities. You will then not question that science in the management of our cities and states and of the nation itself is only knocking at the door. Some of us think we hear in certain quarters an invitation for her to cross the threshold.

CITY MANAGER PLAN IN OHIO[1]

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City manager government will soon be in effect over some 250,000 people living in eighteen cities. One hundred seventy five thousand of these people live in Dayton and Springfield—cities which are now completing their first year under this type of administration. Any deductions to be made regarding this type of government as it operates in the case of larger communities, must be drawn from the experience of these two municipalities over the past year.

A most common test of the character of government is economy, although that is no fairer criterion of worth than it is with shoes, furniture, or tobacco. Cheap government is not necessarily good government. Even were the revenue and expense schedules for the present year available, it would be difficult to make an impartial analysis and comparison of finances in Dayton and Springfield under the two types of government. In Springfield the most concrete evidence of economy has been the reduction of the floating indebtedness from $100,000 to $40,000, although the resources were slightly less than those of former years. In Dayton the net expenditures for 1914 from ordinary sources will be approximately $78,000 more than for the previous year. However, with this increase the general revenues were charged for street repair, street lighting, and emergency health work, formerly costing a much larger amount from bonds.

It must also be recalled the old government of this city for a period of six years past had operated with an average annual deficit of $60,000, all but $125,000 of which had been funded in long term securities. The issue of nearly $1,000,000 in flood

[1] A paper read at the eleventh annual meeting of the American Political Science Association.

emergency bonds in 1913, and the operation of several departments from this revenue for a number of months enabled the previous administration to reduce this liability by $43,000 without actual economies. These facts are stated only to indicate that the unusual conditions in 1913 render a comparison of expenditures between the last year of the old and the first year of the new government somewhat difficult, if not actually unfair.

A study of the tax rates is futile. For 1915 the total rate has been reduced in both cities, in Dayton it being $13.60 per $1000 of valuation as opposed to $14.40 in 1914. This decrease in rate is indicative of nothing so far as economy is concerned, as the increase in taxable property will produce $100,000 revenue additional. This increase in revenue and decrease in rate, however, was secured only by reducing the actual needs of the sinking fund by $75,000. This action would appear deplorable, yet if the enormous increase in debt service, brought about by the careless issue of bonds is taken into consideration, it is perhaps justified.

Until more complete and accurate data are made available by the closing of the books for the present year, only these financial facts remain:

In Springfield the new government has been more economical, and naturally reduced the floating debt; in Dayton the administration had more money than its predecessors; did not materially reduce the floating debt, and did not operate at the usual deficit; did pay from current revenues, in excess of the increase for the year, expenses formerly paid from bonds. Financial criticism must therefore be disregarded, and the success of these two administrations be judged properly from their actual accomplishments.

CITY BUDGET

Probably the care in the preparation of the city budget is most significant in indicating the attention which is given to the financial problems of a municipality. The charter of Dayton is one of the few which provide in detail how the budget shall be made, and these sections appear almost verbatim in the Spring-

field document. In this latter city, however, there was not time to conform to this plan and the model authorized by the State prevailed. Dayton has endeavored to formulate an appropriation ordinance along the most modern lines and for 1915 is making changes which will bring even more improvement. Funds are appropriated to the main functions of the city government under different heads—that is, personal service, contractual service, sundry charges, supplies, materials, and equipment. Each one of these main divisions is again subdivided and entered in the accountant's book, but this further allotment is subject to change by order of the city manager. This secures all the advantages of a detailed budget yet eliminates the necessity of frequent transfers by ordinance. Introducing such a document into a city operating under a radically different system and where comparative data were lacking necessarily created some friction. There have been many transfers, and vouchers have been charged to improper codes. These results would have followed in any city making a similar change. The advantages have come from careful estimates which allowed a larger program of work on limited funds, and which permitted, without serious handicap, the reductions brought about by unexpected curtailment of revenues. In budget making and budget publicity, Dayton and Springfield compare favorably with some ten or a dozen of the most progressive cities.

ACCOUNTING METHODS

Both Springfield and Dayton have accounting systems equally advanced and which are duplicated by few. In neither city has the installation been completed but they are sufficiently under way to measure results. In place of a record of cash receipts and cash expenditures suitable to a cross roads grocery, and which prevails in practically every municipality, these two cities have made possible a balance sheet, supported by distinct schedules for each public utility and industry owned; provide an adequate control over permanent property, equipment and stores; and have definite knowledge of accounts receivable and of liabilities in-

curred, so that no revenues may escape collection, nor appropriations and allotments be overdrawn. Adequate centralized accounting has in Dayton insured the payments of several thousand dollars of revenue formerly lost; made overdrafts impossible; discovered errors of over two hundred thousand dollars in sinking fund calculations; makes all disbursements by check; and controls the cost records installed over street repair, street cleaning; garbage and ash removal, etc.

It is in the purchasing of supplies that the most notable savings have been made and which will amount to more than $33,000 on an expenditure of $200,000. A department may not purchase until its requisition has been approved by the manager, and the purchasing agent does not order until he is assured by the accounting division that appropriated funds are available and have been properly encumbered therefor. Prices are 10 per cent to 90 per cent less than those formerly paid. Bills are discounted at 2 per cent for payment within ten days after the first of the month following. Recognizing that prices fluctuate, larger savings taken at random are: printed matter, $1000; cylinder oil, $1000; coal, $400; meat, $560; fire hose, $16,000, etc. Similar savings, which have gone into increased services, are reported from Springfield. A beginning on the standardization of supplies and materials has been made in Dayton.

PUBLIC WORKS

In the department of public works, both cities under discussion have made notable progress, possibly because the city managers are men of engineering training. It would be anticipated that their primary attention would be given to this branch of city government rather than to other features. In Springfield the manager reports a reduction in engineering cost from something over $10,000 in 1913, to $6700 in 1914, and speaks of improvements costing nearly $600,000. In Ohio however, engineering costs are usually charged to bond issues, so these figures are not particularly impressive.

It is more essential to know that by economies they were able

to double the amount of money expended for street repair. In street cleaning and garbage removal an analysis of the figures of 1913 and 1914 shows a saving of over 25 per cent with a large increase of service.

In Dayton the extension of service has been notable. Inspection of public contract work has been completely reorganized and contractors rigidly required to conform to specifications; street repairs are being made entirely from public revenues with the exception of a balance from bonds issued in former years; there is almost double the amount of street cleaning; streets in the business section are flushed for the first time in the history of the city; collection of rubbish and ashes has been resumed after a year of lapse and made efficient; and reasonably adequate garbage collection is to be had for the first time in ten years. In the division of water every effort has been made to secure a supply more nearly equal to the demand. Pumping machinery has been overhauled, leaks investigated; pressure increased; and in the face of increased pumpage there has been a decrease in the amount of coal burned. A municipal garage has been established; all cars labeled; their use placed under control; and record of costs installed.

This discussion of public work improvements leads to the necessity of a program for the future. The principal weakness of public construction in Dayton has been the absence of a plan which could be adhered to over a long period—feeder sewers run into sewers of smaller dimensions; and water pipes and fire plugs have been placed without regard to the anticipated growth of the community. These are, however, uniform defects of local government. However, in Dayton a conscientious effort has been made to outline work in many directions. The water plans which have been recently completed will cover sixteen years of construction; a sewer survey costing $30,000 is under way; a comprehensive study of public waste disposal has been made; an investigation of adult delinquency is being completed, and upon its findings will be based the future correctional policies of the municipality. The administration may change, and the present appointed executives make way for others, but their successors

will have a definite plan for public construction which they must follow or set aside only after consideration. They will not be required to go ahead on guess work, or on plans of only one or two years anticipated duration.

PUBLIC WELFARE

Both Dayton and Springfield have definitely provided in their charters for a department of public welfare which shall direct activities having to do with the social and moral conditions of the citizen—health, charities, recreation, corrections, etc. I cannot speak of the success of this department in Springfield except to say that they have secured a full time health officer and that the work of this division has been largely increased.

In Dayton civic progress through the welfare department has been extraordinary and the administration may lean most heavily for support upon the results secured. The health division was studied and reorganized. In addition the nursing of the Visiting Nurses Association and of the Tuberculosis Society has been brought under city management. This single control of public nursing has resulted in an infant death rate from 40 per cent to 50 per cent lower than that in three years previous. The removal of insanitary conditions; the regulation of vacant property; a more careful inspection of dairies and places where food products are sold; the stringent regulation of quarantine; and the inspection of school children which have been exposed to contagion lessened morbidity and has reduced the death rate by two points in a thousand, the equivalent of some two hundred and fifty lives. This is notable, and I know of nothing of which the administration in Dayton may be prouder than the fifty-five babies' lives which have been saved.

The facilities for public recreation have been extended far beyond those formerly prevailing. A self supporting public bathing beach has been opened, in connection with which next year, there will be operated a municipal dance hall and restaurant. Seventy-five families cultivated community gardens last summer; there were twenty-two experimental gardens for hun-

dreds of school children under the supervision of an expert gardener; and nearly three hundred vacant lots were prepared as gardens. The number of play grounds under public supervision has been doubled, and new equipment secured until there are now thirty-five play centers for young people.

In the treatment of adult delinquents, new policies are being tried—the moral effect of clean clothing and plenty of baths has been combined with outdoor labor which would otherwise have gone undone. In frequent cases men and women have been placed on probation and jobs secured for them. A municipal lodging house has been established where a half day's labor is exacted for a night's lodging with meals. A free legal aid bureau has been established for those who are too poor to secure private counsel. This division at a cost of $625 has handled over seven hundred applications for services. The city's prosecutor on the other hand has done commendable work in settling family quarrels and back fence squabbles without appeal to the law.

In this paper it has been endeavored to show that the cost of government in Dayton and Springfield has not been excessive, nor has it materially increased when compared with the expenditures in previous years under other types of administration. Also that the results achieved have marched far beyond those in the great majority of municipalities. Compared with local conditions which formerly prevailed this progress has been even more striking. There has been criticism but happily much of it has come from men who are more interested in jobs and profits than in efficient and democratic local government. No little of this complaint has been born of prejudice against an administrator who came from another city.

It would perhaps be well had some means been secured for having all of these criticizing elements represented in the city commission where they might themselves have gone on record on the propositions about which they now complain. It will be interesting to note the effect of proportional representation upon this type of government, and experience in Dayton at least seems to indicate that its introduction would be of no small benefit. Our government is democratic; has awakened wider public in-

terest than ever before; is economical and efficient, but would be strengthened had it the support of definitely minded groups behind it.

Frankly, this discussion is by one who is prejudiced in the belief that the city manager plan is in theory fundamentally sound, and destined to solve in a limited measure our municipal problems. Applying such recognized tests of adequate local government as are available to a bureau of municipal research, I am convinced that Dayton and Springfield have secured governmental results equaled by very few municipalities in America.

SOME REFLECTIONS ON THE CITY MANAGER PLAN OF GOVERNMENT[1]

HERMAN G. JAMES

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Mr. Upson has shown us very clearly what has been accomplished in practice under the city manager plan in Dayton. There are, however, some considerations in connection with the theory of the city manager plan which are worthy of attention, and I am glad that Professor Hatton touched upon the theory side in his remarks.

I am an enthusiastic advocate of the city manager plan and we have several cities in Texas operating under that form and others now considering its adoption, largely as a result of the support given to the plan by our bureau of municipal research and reference. At the same time, I am not without some very grave misgivings as to how the plan will work out in practice because of the all important question of the kind of men who will be chosen for these places.

Of course it is apparent that the men chosen must be chosen for their expert qualifications and not for political reasons. That is axiomatic. But it is to my mind almost equally important that the proper kind of qualifications be insisted upon. It is not enough that the city manager be a first class business man or manager in the ordinary sense. If he is no more than that I confess I do not look forward to much advance in municipal ideals and accomplishments under this new plan. He must indeed have the above qualifications if he is to succeed as manager. But more than that he must be a man of liberal training, broad point of view and a comprehensive conception of the real problems of urban life.

[1] A paper read at the eleventh annual meeting of the American Political Science Association.

For that reason, I have advocated calling him mayor instead of business manager or city manager, for I hope that the office will be filled by men of the training and type of the German burgomaster rather than of the type of our successful American business men and managers. For the same reason, also, I feel it to be unfortunate that almost all of the city managers so far chosen are engineers. It is true that for smaller cities there are very important considerations of economy in favor of appointing an engineer to the position. For most of the work of a small city consists in work of an engineering character and the salary of a city engineer can be saved by appointing an engineer to the post of city manager. But the same reason does not apply in the case of larger cities where the general supervisory duties of the city manager would occupy his time to such an extent that he could not himself take immediate charge of any one department. In such cities the prime considerations in choosing the city manager should be those enumerated above, and those qualifications are certainly by no means found exclusively or even preponderatingly among men in the engineering profession.

Now that leads me to consider another point touched upon here in the discussion, namely the danger of giving too much prominence to the city manager as a factor in government and so inevitably making him a political issue. He should certainly remain in the background as far as the public is concerned, but within the city government he must be accorded by the representative body much the same position that is accorded to the president of the university by the regents or to the superintendent of schools by the board of education. In no other way it seems to me can the greatest possibilities of the new plan come to fruition.

There remains one important point to be touched upon in this connection, and that is the question of where and how cities are to find managers of the high order described above. If our universities were doing their duty we could say, look to graduates of the universities trained with this in view. But unfortunately our universities are not doing their duty in this regard, and though a feeble beginning has been made here and there,

it is to be feared that the movement for the city manager, with all that it promises will eventually fail, not because our cities are unwilling to try it, not because the plan itself is not a good one, but because our institutions of higher learning have failed to grasp the opportunity within their reach for conferring a lasting good on our American municipalities.

COURT ORGANIZATION FOR A METROPOLITAN DISTRICT[1]

HERBERT HARLEY
Chicago

The idea of a unified and responsible court for a metropolitan district must not be looked upon as a competitor of the idea of a unified state court system; it is instead an elaboration of the state system intended to meet extraordinary conditions. The needs and conditions of administration in the great modern city are so different from those in rural districts that a system of courts applicable to a State which is wholly rural must necessarily be elaborated to adapt it to a State which has such a metropolitan center. In many cities the present situation is so desperate that it is plausible to hold that reorganization will come first in those cities and later in the States in which they are located.

In either case there will be no serious difficulty in adjusting the local court to the state system. And though we speak of it as a local court it is of course but the local agency for the exercise of a state function. The large city usually has suburbs which should not be excluded from the benefits of reorganization. The metropolitan judicial district may then be presumed to include the city, its suburbs, and such other territory as may be conveniently administered from the local center. In most instances this would mean the county in which the large city is located.

It is not clear how large a population is required to rate in our formula as a metropolitan district. A county containing 100,000 people with a total of five or six judges, exclusive of lay magistrates, could doubtless be well administered under the general state system. One twice as populous would put too great a

[1] A paper read at the eleventh annual meeting of the American Political Science Association.

strain upon the comparatively loose structure designed for the average county. There appears to be a neutral zone between counties of 100,000 and 150,000, between those having a force of four or five judges and those having eight or ten, and to say in advance which system would serve best, having regard for economies and accomplishments as yet hardly conceived, would be presumptuous. Both forms must be tried out in competition for a number of years before positive statements can be made. The answer may come in an organization more elaborate than that of the typical county and less formal and autonomous than the scheme which I shall present as specially suited to cities of 200,000 or more. We had in 1910 twenty-eight such cities with a combined population of 17,000,000 and a reference to the population by counties would probably add to this list.

With this understanding as to the nature of the metropolitan district and its place in the general state scheme, we will proceed to the features of organization which are found necessary by experience or which appeal to our judgment as consistent with the best theories of administration. A first consideration is as to whether the judges of the metropolitan court are to be of more than one grade with respect to judicial power. At the present time our court system, in both city and country, is a judicial hierarchy. The existence of several grades of judicial officer appears necessary in rural districts from the nature of the administrative problem. The judicial hierarchy persists in the city because the city is only a grown-up town and there has never been a comprehensive reconstruction. It is defended on the ground that there are numerous causes of relatively little importance which do not require a high degree of skill and training, and there is economy in maintaining for these causes a class of inferior judges at a lower salary. The opposing reasons may be stated briefly as follows:

1. In the first place there should be no rigid division of the judicial force, as must follow the creation of an inferior class of judges, because in a court in which the economies of specialization are fully utilized, the entire body of judges should be available when a selection is made for any one of numerous technical

branches. Otherwise the right man and the right field of work cannot be brought together.

2. A large share of the matters classed as legally unimportant are socially of the greatest significance, if not singly, then when multiplied by the thousand. In the criminal field the vital importance of the lower branch is clearly seen. If the first screening is done effectually society will have fewer notable offenses to contend with in the higher court. In the light of practical psychology, but recently turned upon our criminal courts, who can say that the magistrate who does the first winnowing is not as important an official and entitled to as high salary as the judge who presides over the jury trial in cases of felony?

3. The so-called petty civil causes are not at all petty from the standpoint of a large share of the people for whom the court exists. The litigants involved are as much entitled to say whether their causes are petty as anybody. The fact is that there are very few if any causes which can safely be called petty and nobody can say in which actions the potential significance will develop. All deserve to be treated seriously.

4. Because judges who can handle these commoner causes with tact and good sense are not plentiful, and because such work is frequently a severe drain on nerve power, it is unfair to the incumbent and prejudicial to the service to make the salary depend upon the extent of jurisdiction exercised by the judge. Differences in salary had better depend upon length of service.

5. There is no proof that cheaper judges for certain popular courts would effect any saving. All of our present experience points to the opposite conclusion. Economy lies in getting a right and lasting adjudication in the first instance and this requires exceptional men.

For these reasons it seems unavoidable that we should decide in favor of equal judicial power for all the judges of the model metropolitan court. In merging all the courts of a given district and taking temporarily the judges already in service, it may, however, be a practical necessity to make two classes of judges. As a tactical concession this can be done by having a junior class of judges in which the present inferior class of judges will be

placed, but these juniors should be given just as wide judicial power as the senior judges. The distinction can be preserved by making only senior judges eligible to the judicial council, or governing board, and to the office of presiding justice of a division of the court. If a difference in salary must also be conceded this should be looked upon as a sop to tradition and prejudice.

Having then a body of judges of equal jurisdiction we proceed to consideration of the divisions which are to be created for administrative purposes. The divisions arise from the diverse nature of the service to be rendered. They may be of two sorts; those specified by the statutes, and those created subsequently by the court under power conferred by the act. These latter can be altered or abolished without legislative action on short notice.

It is clear that the larger the district is, and the more numerous the force of judges, the greater will be the opportunity for specializing. With a force of ten or twelve judges there could hardly be more than three or four main divisions. With a force of forty or fifty there could be as many divisions, and sub-divisions, or branches, as the service required, but a limit would be imposed by the need for avoiding too narrow a range of employment for the individual judge, who should have a field of work small enough to permit of mastery of the law and yet large enough to encourage mental growth.

The most natural division of work is between civil and criminal. There must be a criminal division. In even the smaller cities some specialization within the criminal field is necessary. This should be provided by subdividing the criminal division into as many branches as may be required. There should be no statutory separation of the criminal business into two divisions, each with a presiding justice, for this would divide responsibility for the enforcement of criminal law, which is the curse of practically all our city courts today. Let one man be responsible for the administration of criminal law in all branches.

The civil causes divide naturally into those which involve the extraordinary remedies of equity, for which the chancery divi-

sion will be created, and the two classes of common law causes which are tried with and without juries. There are left then the probate matters, divorce cases, and certain quasi-criminal causes, to which may be added advantageously criminal actions against husbands and juvenile offenders. As these matters all relate to the family they justify the creation of a division to be known as the probate and domestic relations division.

We have then the following five divisions: chancery, probate and domestic relations, civil jury, civil non-jury, and criminal. An anomaly may be presented by a metropolitan district in which there is located at the time of the reorganization a localized intermediate court of appeal. Unification points to the need for merging the jurisdiction of the intermediate appellate court and continuing its powers as a division of the new court. This may make a sixth division.

A chief justice can superintend six divisions. The public can become familiar with these parts but might not avoid confusion if there were many more. Probably in even the largest cities further specialization should be accomplished by subdividing these divisions as may from time to time appear convenient.

The large powers for self-government which such a court must possess are to be exercised through a representative body of convenient size which is best known as the judicial council. The council is naturally made up of the presiding justices of the several divisions. This gives every main division a representative in the council. It permits a full view of all the activities of the entire court whenever the council is in session. The addition of an executive head of the council, who will probably be called the chief justice, completes the simple organization.

It is presumed that the statute has given to the metropolitan court large powers for establishing and amending procedural rules. This question has been pretty thoroughly threshed out in recent years and the profession stands committed to it almost universally. There will never be responsible administration of justice as long as wayward and incompetent legislatures lay down a tangle of procedural law, minute, mandatory, inconsistent, tying the hands of judges, exalting the record, and turning the

energy of trial and appellate courts from a consideration of ends to one of means. There will also be in such a court a body of orders relating to the internal affairs of the court, which must be adopted by the council and enforced by the chief justice.

It is evident then that the power which selects the presiding justices of divisions is ultimately the power which dominates the judicial council. Nobody is so well qualified for the very important work of appointing the presiding justices as the chief justice. A judicial council made up by any force in opposition to the chief justice might easily negative his power, split up the responsibility, and bring the machine to a stand-still so far as an administrative policy is concerned.

The power of appointment to the office of presiding justice, on the other hand, gives the chief justice the preponderating power necessary to locate responsibility. But to prevent arbitrary interference by an inexperienced chief justice it seems well to provide that a judge appointed to the office of presiding justice shall hold that place with an *ex officio* position on the judicial council for a definite period equal to the term of the chief justice. This would result in the gradual making over of the judicial council. A new chief justice, with power at some future time to exchange several places in the council, would exert an influence on the short term members. His hold on his new appointees, on the other hand, would not be absolute, for they would be beyond removal by him. A nice poise is thus obtained.

Places in the respective divisions must be filled by assignment by the chief justice. This affords expert choice of work for every judge by the responsible head of the court. There is need for a reasonable guarantee to each judge that he will not be arbitrarily switched from one field to another, thus forfeiting his special experience. To this end it should be provided that tenure in a division should be permanent except that the chief justice can reassign to a vacancy arising in another division, or make an interchange of judges between divisions, by securing the consent of the presiding justice of each division from which a judge is taken. But to permit of utilizing the entire force to advantage in meeting emergencies the chief justice should have power to make

temporary assignments, not exceeding six months, at will, and to require any associate judge not occupied in his regular work to take part in the sittings of any other division. This makes the entire force fluid but protects the associate and presiding justices from abuse of the power to shift units.

Argument against an inferior class of judges to serve at a lower salary has been submitted. There are certain duties, however, more administrative than judicial, which can properly be performed by an official of lower salary under the direction of a judge. To meet this need the act should provide for a certain number of masters, and fix their compensation. The powers which they shall exercise should be determined by the judicial council. Genuine judicial talent is too rare and too valuable to be permitted to wear itself out on details which can as well be done by an assistant. Masters may become highly expert, and as long as they are directed, may prove economical from more than the mere financial standpoint.

The act will also create a single clerk's office and provide for appointment of a clerk by the judicial council. Branch clerk's offices will be created as needed by the council and the clerk will appoint deputies from a list of eligibles made up according to civil service rules to be adopted by the council. The chief justice should have power to make rules respecting the appointment, removal, and duties of persons to keep order in the various branches of the court. The jury commissioners should also be brought under the appointive powers of the chief justice and given a definite term of service.

Expertness in judicial work implies long tenure. The kind of judges who will be attracted to the service once it is coördinate and efficient will be men seeking a career on the bench. Whatever their express terms of service their ultimate service will be long. It will be appropriate to provide for a retirement pension, the terms of which will depend in great measure upon the nature of their tenure, which is not part of our present subject.

There are two features of an organized court which immediately command attention. One is the matter of meetings of judges, and the other statistics and publicity. The statute should provide for meetings of the judges of divisions as often

as once a month, and for a meeting of all the judges at least once a year. If the court be comparatively small, say from ten to twenty in number, general meetings should be held monthly.

At the annual meeting the chief justice will present his report, containing complete statistics regarding the business done by the several divisions of the court and the present state of the dockets. The statistics will be collected under the following detailed heads: litigation, efficiency of personnel, social, criminal, and financial. The report will also be published and given a circulation at least as wide as the entire local bar.

From these meetings and statistics come cohesion, discipline, inspiration. Without organization these tremendous forces are left untapped. The meetings quickly develop an *esprit de corps* which is worth more than five hundred sections of the code of civil procedure. The judges of the court immediately realize that they are tied together, that they will sink or swim according as the entire court fails or succeeds in public esteem. Every judge becomes jealous necessarily for the reputation of the court and solicitous for the success of every member. Team work is inevitable. Discipline directly by the chief justice or judicial council is almost obviated by the mere discussion of the affairs of the court in open meetings. The ideals and the conscience of the more sensitive speedily become the ideals and the conscience of the entire court.

The statistics have enormous subjective force. Year by year the judges of such a court strive, not merely to retain public confidence, but to set fresh marks of accomplishment. The statistics flood every little corner of the court system with the wholesome light of publicity. On the objective side the close analysis of the court's work, presented by the published report, will possess a value we are hardly able now, in the absence of experience, to estimate. Our criminal and social legislation today is based too much on guesswork. It can never have the needed foundation of fact until our courts, now going their irresponsible and careless way, become self-conscious and self-revealing.

An organized court thus put on its mettle will invent methods of accomplishing its work more speedily, more economically, and more humanly than we can now conceive. One of its business

inventions will be a stenographic bureau so that litigants will not be bled in costs as at present. The municipal court of Chicago, which has blazed a way into this great socio-judicial field of the future, gives us promise of what may become in time universal. This court illustrates the necessity for the segregation of causes in its speeders' court, where all those who offend the traffic laws are handled in a consistent manner. In the first sixty days of its existence this branch court collected $10,000 in fines and enforced respect for necessary rules. The great Chicago morals court was established by Chief Justice Olson on this same theory of segregating causes and fixing responsibility on a single judge. The morals court has not abolished vice, but it has thrown more light on it than ever before in any city since there first was a vice problem, and has got under way remedial forces which will inevitably save all that can be saved from the social wreckage.

Next came the boys' court, the place where all offenders between the ages of seventeen and twenty-one, whatever the charge against them, are rounded up. The age of adolescence is the dangerous age in the city. Now that it has been done, anybody and everybody can see that a boys' court is even more essential than a juvenile court. It stops youth at the threshold of a life of crime.

One of the unsolved problems in this country has been that of trying civil causes involving small amounts at an expense which the traffic can bear. We have tried every sort of way except that of getting a really able judge and telling him to go ahead and do as he pleases. These little cases cannot stand the cost of attorney fees. To employ juries is to indulge in extravagance which defeats justice at the outset. What is wanted is Oriental justice. An organized court can dispense justice in these little, irritating, troublesome matters swiftly and surely, as the next speaker on the programme will tell you.[2]

These and similar discoveries will inevitably be made when once our city courts constitute an organism, have a power to think and act. But one of the greatest for all time must be the

[2] Judge Manuel Levine on The Conciliation Court of Cleveland; for the text of this address see Bulletin VIII, American Judicature Society, 1732 First National Bank Building, Chicago.

pyschopathic laboratory, the great contribution of science to social jurisprudence. At this early stage one who learns what can be done with this aid is shocked to think that our criminal courts are going on in the old blundering way. The clumsiness of a medieval jurisprudence cannot much longer be tolerated. We will know more about the people the law deals with in the future. We will go further even, by testing the minds of witnesses and jurors in civil as well as criminal cases.

It is impossible today to conceive of the efficient administration of justice in the modern large city, efficient from the standpoint of sociology, as well as efficient from the judicial and economic point of view, without specialization and thorough direction of the judicial force. Not to have specialization and direction would be equivalent, in the business world, to employing fifty or one hundred clerks for a department store and allowing them to do any part of the work which they might, at any time, prefer to do. In recoiling from this absurdity, as our system of courts has slowly evolved under the noxious shade of verbose constitutional provisions, we have created numerous special courts and various classes of judges. In commercial terms, our judicial business is done at a number of small and disassociated shops. Occasionally a judge finds the particular work for which his temperament and training fit him, but seldom is he allowed to remain long in that branch. A really expert knowledge of the entire broad field of law is no longer humanly possible. At the present time our judges, admirable men for the most part, patient, long suffering, studious, are square pegs in round holes. They are commonly inferior to counsel specialized in particular subjects. In some cities the separate, and alleged independent, courts in which they sit have conflicting and competitive jurisdiction. It is as though there were several water departments, several fire departments, and several health departments, all operating concurrently or competitively, in the same field. Good service is impossible. We even have no present ideals of good service.

There is absolutely no way to administer justice efficiently in the large city, however honest and intelligent the judges may be, except by the grouping of like causes in particular tribunals which

are but divisions or branches of the one indivisible court, and by the specialization in these branch courts of judges who are consciously chosen for their respective fields by an expert and responsible power. The only question whatsoever is as to the degree of concentration of administrative authority which may be desirable. As to this there is room for argument and need for experience. We only know that the larger the force of judges the greater the need for concentration of authority because the temptation to shirk is in proportion to the opportunity,

I am aware that such ruthless sentiments will provoke solicitous expressions for the independence of the individual judge. But it must be remembered that the individual judge is never influenced even, not to say coerced, in his slightest decision, by the presiding justice, the chief justice, or the whole judicial council. He will be, as the free and untrammeled judge of a strong unified court, vastly more independent than he is now. He will have only to consult the law, the disposition of the supreme court, and his own conscience, a trinity of masters far easier to obey than those to which so called independent judges now owe allegiance. The only independence the individual judge loses in an organized court is freedom to continue cases when the home team is winning.

There can be no reasonable question as to the safety of such concentrated power, a power which we will not undertake to minify, for it must justify itself constantly before the appellate court and before the supreme court of public opinion. A court carries neither sword nor purse. Its every act is done in the open, and spread abroad instantly. The court renders an accounting to the law and to the conscience of mankind. There can be no concealment, no obliquity of purpose.

In the modern city there are powerful factors which are not to be brought under the law except by a powerful judiciary. Often there is no court powerful enough to apply the law of conspiracy and monopoly to the controversies between employers and unions. As a result the entire public suffers from guerilla warfare. In the financial world the great forces war continually, dodging in and out among our courts as if they were fences

or barb wire entanglements. In politics we have feuds in which criminal courts play the parts of pawns when they should be castles of defence.

Country life conserves the best that civilization acquires, but it is in the city that acquisition is made, in the city, where civilization, against the forces of darkness, bucks the line for gains of an inch at a time. Our cities grow ever more and more vast, ever more and more complex. There must be a concentrated civic judicial power to enable our law to cope with modern dangers. Conceive then of such a unified court with its self-discipline, its cohesiveness, its concentrated responsibility, its power great enough to adjudicate between the most powerful social and industrial and political forces, and withal as delicate as the magnetic needle, delicate enough to touch the most sensitive nerves of the social body.

There could be no corrupt police force in a city possessing such a court. A skulking, self-seeking, subservient, conniving, shirking, municipal government, a typical one, in fact, could not live long beside such a judicial arm. The political boss could no longer grant immunity from punishment; the city could no longer be bled on contracts; nor could it long retain an unjust and discriminatory method of taxation.

The lawyer is not ready for such a court because he hasn't the vision. With his interest centered in reform of the rules of procedure, he is like a school boy hoarding pretty pebbles, one ignorant of the science of geology, the other oblivious of the scaffolding which must support the judicial structure.

The social worker has seen the light but has misconstrued its inner meaning. Everywhere in the large cities there is agitation for domesic relations courts and morals courts and boys' courts and psychopathic laboratories. The impatient lay agitators want the imposing facade without laying foundations. It may be that, in our blind, muddled way, we shall continue to grope toward the light, trying and failing, until we shall have paid the price of wisdom, or on the other hand, this being a time when miracles are common, we may sail to glory with the short ballot and the commission-manager plan of city government.

REPEAL OF THE JUDICIARY ACT OF 1801

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The intent of the framers of the judiciary act of 1801 has been to the present day a matter of some doubt. On the one hand it has been shown that alterations in the judiciary system of the United States had long been agitated before the failure of the Federalist party in the elections of 1800.[1] Soon after the establishment of federal courts in 1789 relief had been sought by the justices of the supreme court from the arduous duties necessitated in riding the circuits.[2] In 1799 a bill designed to establish a system of circuit courts was reported upon which action was postponed. But this later became the basis for the act of 1801.[3] It has, therefore, been contended that, quite apart from the political advantage given the Federalists by the passage of the act of 1801, such changes in the judiciary system were warranted by necessity.

At the same time it is equally clear that the amount of business before the courts of the United States, although it had been excessive, had begun to decline. No further prosecutions were to be expected under the alien and sedition acts, and a decrease in the number of suits before the federal courts involving other questions was observed even before the accession of Jefferson to the presidency.[4] Although the expense involved in the creation of the sixteen additional judgeships was grossly overestimated at the time,[5] it cannot be doubted that the Republi-

[1] See Farrand: *American Historical Review*, v, p. 682.

[2] *American State Papers*, Misc. i, pp. 51–52.

[3] *Annals 7th Cong.*, 1st Sess., p. 672.

[4] *American State Papers*, Misc. i, p. 319 et seq.

[5] In the debates on the repeal of the act of 1801 the Republicans claimed the expense of the new courts to be $137,000. Professor Farrand estimates the expense at not more than $50,000. *American Historical Review*, v. p. 685.

cans with their avowed policy of retrenchment had solid ground for feeling that these changes in the judiciary burdened the nation with an unnecessary expenditure.[6]

But what aroused the bitterest hostility among the Republicans was the partisan character of the appointments made by President Adams to the newly created offices. Nominated and confirmed during the last hours of his administration, every officer was a staunch Federalist and thoroughly wanting in sympathy with the new party which was so soon to come into power. A constitutional prohibition prevented the President from rewarding his friends in Congress with places upon the new circuit courts.[7] But places were found for Richard Bassett who as a presidential elector in 1797 had voted for Adams, and for Jeremiah Smith who had distinguished himself during the two administrations of Washington by his unwavering loyalty in the support of all Federalist measures before Congress. Charles Lee, Adams' attorney general, and Oliver Wolcott, who succeeded Hamilton as secretary of the treasury and won the undying enmity of the Republicans by his conduct of that office, were similarly rewarded. Jared Ingersoll and Philip Barton Key, ardent Federalist partisans, were also commissioned.[8]

Other appointments to the circuit courts were for the most part made by promotion from the district courts. To the vacancies created in these courts President Adams followed the same policy of appointing loyal Federalists. Elijah Paine and Ray Greene, members of the United States Senate, and William H. Hill and Jacob Read, members of the House of Representatives, left Congress to receive places on the district courts. Harrison Gray Otis and John Wilkes Kittera, able advocates of Federalist policies in the House of Representatives, departed at the same time, carrying with them commissions to United States district attorneyships.[9] It is not surprising, therefore, that factional feeling among the Republicans ran high and severe criticism was meted out to the courts.

[6] *Annals 7th Cong.*, 1st Sess., p. 26.
[7] Art. I, Sect. 4.
[8] *Executive Journal* (1789–1805), pp. 381, 383.
[9] Ibid., pp. 384–385.

But whether the "act to provide for the more convenient organization of the courts of the United States" was the result of a partisan attempt of the Federalists to retain a hold on the national government after they had been defeated in the elections of 1800 may or may not be true. The fact is that by a large group the changes were believed to be of this character. A letter of Stevens Thomson Mason, a close friend of Thomas Jefferson, declares that "a new judiciary system has been adopted with a view to make permanent provision for such of the Federalists and Tories as cannot hope to continue in office under the new administration."[10]

This is, of course, partisan comment on possibly partisan action. Nevertheless there was a general expectation that the new administration would make some changes in the judiciary. The nature of these changes was not early determined and no idea was held that extensive alteration would be possible. On March 16, 1801, William B. Giles wrote Jefferson that "a pretty general purgation of office has been one of the benefits expected by the friends of the new order of things, and although an indiscriminate privation of office, merely from a difference in political sentiment, might not be expected; yet it is expected, and confidently expected, the obnoxious men will be ousted. It appears to me that the only check upon the judiciary system as it is now organized and filled, is the removal of all its executive officers indiscriminately. The judges have been the most unblushing violators of the constitutional restrictions and their officers have been the humble echoes of all their vicious schemes."[11]

At the establishment of the national government Jefferson had insisted upon the necessity of a strong judiciary. "Let the judiciary," he urged, "be rendered respectable;" and he advocated firm tenure and competent salaries for the judges.[12] But when

[10] Breckinridge MSS., Feb. (19), 1801. The collection of the Breckinridge family papers in the Library of Congress has not yet been opened to the public. I am indebted to Miss Sophonisba Breckinridge for permission to make use of these unusually valuable manuscripts.

[11] Jefferson MSS., March 16, 1801.

[12] Letter to Barry, December 21, 1791.

the courts began the enforcement of the sedition act his attitude changed to one of hostility. After the conviction of Matthew Lyon for violation of that measure he wrote: "I know not which mortifies me most, that I should have to write what I think, or that my country bear such a state of things. Yet Lyon's judges and a jury of all nations are objects of rational fear."[13] But in spite of his indignant protests at the judicial decisions interpreting the obnoxious Federalist legislation, Jefferson at the time he became President, had no thought of assailing the courts themselves. He agreed that no further encroachment upon the judicial power than that suggested by Giles was possible, and replied that "the courts being so decidedly federal and irremovable, it is believed that republican attorneys and marshals, being the doors of entrance into the courts, are indispensably necessary as a shield to the republican part of our fellow citizens, which, I believe is the main body of our people."[14]

By June of the same year far more radical plans had developed. From one extreme the Republicans rushed to the other and the actual invasion of the judicial power was advocated. In a letter of June 1, 1801 Giles said: "It appears to me that no remedy is competent to redress the evil but an absolute repeal of the whole judiciary system, terminating the present offices and creating an entire new system, defining the common law doctrine, and restraining to the proper constitutional extent the jurisdiction of the courts."[15] A little later Jefferson admits that "the removal of excrescences from the judiciary is the universal demand."[16]

But the real movement for the repeal of the act creating the obnoxious judges came from Kentucky. In November, 1801, the legislature of that State had abolished the district courts and the general court and had established circuit courts for each county.[17] Popular interest in these courts was very keen be-

[13] Jefferson MSS., November 26, 1798.
[14] Jefferson MSS., March 23, 1801.
[15] Jefferson MSS., June 1, 1801.
[16] Jefferson MSS., August 26, 1801.
[17] *The Palladium* (Frankfort, Ky.), November 27, 1801.

cause of the powers given them in the settlement of land disputes. Upon the establishment of the United States circuit courts, the people of the State feared a conflict with the new system they had just fashioned. Numerous letters from constituents came in to John Breckinridge, who then represented Kentucky in the United States Senate, asking that some change be made in the judiciary system. One correspondent declared: "There is no act of the former Congress that in my opinion will work more subtle or certain mischief than that of extending their courts—as its tendency will be to disunite the people and wean their affections for their state governments. In Kentucky it will operate more mischievously than anywhere else by jeopardizing those principles upon which our courts have hitherto proceeded in settling their land controversies. I much hope this law will be repealed or so altered that we may feel easy under it. With the other excrescences of aristocratic legislation these additional judges may be left to graze in their own pastures."[18]

Assured of the support of the administration by the broad hint thrown out by President Jefferson in his first annual message, Breckinridge determined to lead the movement for a revision of the judicial system. At the outset he sought the advice of John Taylor of Caroline who in a long letter set forth the arguments which became the basis of the repeal of the act of 1801. When Breckinridge rose in the Senate on January 6, 1802 to propose the repeal he followed the line of reasoning outlined by Taylor so closely that in many places he made use of the identical words of the letter.

Taylor thought there were two questions involved, first whether the office established was to continue; and second whether the officer should continue after the office had been abolished as being unnecessary.

As to the first, he says: "Congress are empowered *from time to time* to ordain and establish inferior courts.

"The law for establishing the present inferior courts is a legislative instruction affirming that under this clause Congress may

[18] Breckinridge MSS., November 21, 1801.

abolish as well as create these judicial offices, because it does expressly abolish the then existing inferior courts for the purpose of making way for the present.[19]

"It is probable that this construction is correct, but it is equally pertinent to our object whether it is or not. If it is, then the present inferior courts may be abolished as constitutionally as the last; if it is not, then the law for abolishing the former courts and establishing the present was unconstitutional and is undoubtedly repealable.

"Thus the only ground which the present inferior courts can take is that Congress may from time to time create, regulate, or abolish such courts as the public interest may dictate, because such is the very tenure under which they exist."

But it would profit the Republicans little to abolish the newly established circuit courts if they were obliged at the same time to make provision for the judges who were the incumbents of those offices. In the second part of his letter Taylor explains how they may get rid of the judges as well as abolish the offices.

"The Constitution," he says, "declares that the judge shall hold his office during good behavior. Could it mean that he should hold his office after it had been abolished? Could it mean that his tenure should be limited by behaving well in an office which did not exist?

"It must either have intended these absurdities, or admit of a construction which will avoid them. This construction obviously is that the officer should hold that which he might hold, namely, an existing office, so long as he did that which he might do, namely, his duty in that office; and not that he should hold an office which did not exist, or perform duties not sanctioned by law. If, therefore, Congress can abolish the courts, as they did by the last law, the officer dies with the office, unless you allow the Constitution to admit impossibilities as well as absurdities. A construction bottomed upon either overturns the benefits of language and intellect.

"The article of the Constitution under consideration closes

[19] Two district courts were abolished by the act of 1801 but the judges were appointed to the new circuit courts.

with an idea which strongly supports my construction. The salary is to be paid 'during their continuance in office.' This limitation of salary is perfectly clear and distinct. It literally excludes the idea of paying a salary when the officer is not in office; and it is undeniably certain that he cannot be in office when there is no office. There must have been some other mode by which the officer should cease to be in office than that of bad behavior, because if this had not been the case, the Constitution would have directed 'that the judges should hold their offices *and salaries during* good behavior,' instead of directing 'that they should hold their salaries during their *continuance in office.*' This could only be an abolition of the office itself, by which the salary would cease with the office, although the judge might have conducted himself unexceptionally.

"This construction certainly coincides with the public opinion and the principles of the Constitution. By neither is the idea for a moment tolerated of maintaining burthensome sinecure offices to enrich unfruitful individuals.

"Nor is it incompatible with the 'good behavior' tenure when its origin is considered. It was invented in England to counteract the influence of the crown over the judges. And we have rushed into the principle with such precipitancy, in imitation of this our general prototype, as to have outstript monarchists in our efforts to establish a judicial oligarchy; their judges being removable by a joint vote of Lords and Commons, and ours by no similar or easy process.

"The tenure, however, is evidently bottomed on the idea of securing the honesty of judges while exercising the office, and not upon that of sustaining useless or pernicious offices for the sake of the judges. The regulation of officers in England, and indeed of inferior offices in most or all countries, depends upon the legislature; it is a part of the detail of government which necessarily devolves upon it, and is beyond the foresight of a constitution because it depends upon variable circumstances. And in England a regulation of the courts of justice was never supposed to be a violation of the 'good behavior' tenure.

"If this principle should disable Congress from erecting tribu-

nals which temporary circumstances might require, without entailing them upon society after these circumstances by ceasing had converted them into grievances, it would be used in a mode contemplated neither in its original or duplicate.

"Whether courts are created by a regard to the administration of justice, or with the purpose of rewarding a meritorious faction, the legislature may certainly abolish them without infringing the Constitution, whenever they are not required by the administration of justice, or the merit of the faction is exploded and their claim to reward disallowed."[20]

Breckinridge, in moving the repeal of the act of 1801, took the ground that the changes made in the judiciary were unnecessary and improper in that they had increased the number of federal judges at a time when the amount of business pending before the courts of the United States was steadily declining. He began by accepting the construction laid down by Taylor that the act of 1801 was "a legislative construction" of the power of Congress "from time to time, to ordain and establish inferior courts," because the two districts were abolished by the twenty-seventh section of that act. But independent of this construction, he insisted that it would be a paradox in legislation to say that the legislature in one Congress has a discretionary power to establish inferior courts and yet be restrained from abolishing them in a subsequent Congress of equal authority.

With respect to the judges he was equally certain that they must cease to be in office when the repeal of the act was accomplished. The constitutional guarantees, he thought, protected them against removal by the executive or diminution of their salaries by the legislature but never contemplated the possibility of their surviving the destruction of their offices. This would be to create a group of "nondescripts" unacknowledged by either the letter or the spirit of the Constitution.[21]

The repeal was carried and the courts were abolished and the judges legislated out of office. But this did not seem sufficient to many persons in Kentucky and the western country. In

[20] Breckinridge MSS., December 22, 1801.
[21] *Annals 7th Cong.*, 1st Sess., pp. 26–29.

truth, what was wanted by these more radical advocates of states rights was the destruction of all inferior courts of the United States and the limitation of federal jurisdiction to the scope proposed by Richard Henry Lee in the debates on the judiciary act of 1789.[22] Senator Breckinridge was urged to "go farther and make such a change in the Constitution as to limit the jurisdiction of the federal courts to courts of admiralty and cases arising under the Constitution." If this could not be done he was asked to "have it done away with in the State of Kentucky." His constituents pointed out that Kentucky was so remote from the eastern section of the country that the exercise of authority by the federal courts must interfere materially with their welfare.[23]

A judicial review of the repealing act was never had, but its constitutionality has been challenged by eminent authority.[24] Early in the debates on the repeal Breckinridge had pointed out that "if the judges are entitled to their salaries under the Constitution, our repeal will not affect them; and they will, no doubt, resort to their proper remedy."[25] Thereafter an appeal to the courts by the deposed judges had been in the minds of all. To prevent such action the next session of the supreme court was set for February, 1803, the August term being omitted in 1802. This was denounced by James A. Bayard, the leader of the Federalists in the House of Representatives, as "a patchwork designed to cover one object, the postponement of the next session of the supreme court . . . . . to give the repealing act its full effect before the judges are allowed to assemble."[26]

Denied a judicial review of the act depriving them of their commissions, the judges of the circuit courts forwarded a petition to Congress in which they represented "that the rights secured to them by the Constitution, as members of the judicial depart-

[22] On June 22, 1789 Richard Henry Lee proposed to amend the Judiciary Act to provide "that the jurisdiction of the federal courts should be confined to cases of admiralty and maritime jurisdiction." Maclay: *Journal*, p. 74.

[23] Breckinridge MSS., February 22, 1802.

[24] *Story on the Constitution*, ii, p. 401.

[25] *Annals 7th Cong.*, 1st Sess., p. 30.

[26] Hamilton MSS., April 12, 1802.

ment had been impaired," and asking that the case be submitted to judicial determination. The Senate declined to consider the petition, while a proposition to submit the matter to the courts for decision was defeated in the House. Here it was held that the right to abolish inferior courts rested with Congress and that the judges were entitled to compensation only for services rendered.[27]

It is superfluous to point out that the importance of the repeal of the act of 1801 lay in the fact that the final determination of the right to abolish inferior courts and to deprive the incumbents thereof of their commissions fell to Congress. No opportunity being given the judiciary to interpret the Constitution with respect to this power, there was no means of challenging the validity of the measure in the way customary in our government. Congress was, therefore, free to claim that a precedent had been set which should determine future action in dealing with the judiciary.

The seriousness with which this precedent was urged in the course of the recent debates on the measure abolishing the United States commerce court should call attention to the unsatisfactory position of the doctrine of congressional control over the inferior courts. Chief Justice Marshall in private commented upon the repealing act of 1802 considering it to be "operative in depriving the judges of all power derived under the act repealed. But the office remains which is a mere capacity, without a new appointment, to receive and exercise any new judicial powers which the legislature may confer."[28]

In practice this is the view Congress has followed in every alteration made in the judiciary subsequent to 1802. Nevertheless the validity of the early precedent has been asserted in both houses of Congress and, according to many statesmen, has never been abandoned. That it may again be brought forward to justify an encroachment upon the judiciary portends a real danger to this department of government.

[27] *Annals 7th Cong.*, 2nd Sess., pp. 427–441.
[28] Hamilton MSS., April 25, 1802.

LEGISLATIVE NOTES AND REVIEWS

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Present Tendencies in Judicial Reform. An attempt to appraise existing forces making for judicial efficiency partakes almost equally of the hazards and the enticements of prophecy. Throughout the evolution of Anglo-American jurisprudence there have been upheavals from which have emerged definite gains for the courts as a practical means for the equitable adjustment of private controversies. Such an upheaval gave birth to the court of chancery and admitted the lucidity and directness of the civil law. Another such upheaval resulted in the substitution of English for the bastard law Latin of court pleadings and process. Such an upheaval came in the State of New York in 1848 when the people, through their legislature, undertook to reform the administration of justice by abolishing archaic forms in favor of common sense. In England the climax of fifty years of agitation was reached with the judicature acts of 1873 and 1875 by which all courts of England and Wales were merged and given concentrated and responsible administrative direction. There is abundant evidence that such another upheaval, now long overdue in the United States, is well under way.

From feudalism to the self-government of the American people in the twentieth century is a long journey. The law and the means for its enforcement have necessarily been found lagging at many places along the road. Progress has been inconstant because it has been in response to conditions of unstable equilibrium due to the discrepancy between the current idea of justice and current practice. At the present time ideals are far in advance of legal justice; in practically every other respect we are a whole generation nearer ideal efficiency than is our judicial system.

In the latter part of the eighteenth century English law had caught up in a measure with social and commercial progress so that Blackstone could record his belief that the English system had attained final form and relative perfection. But the modern world was even then approaching a swirling movement which has constantly accelerated and

is still gaining impetus. So Blackstone's complacent comment served as a text for the first great legal agitator of modern times, Jeremy Bentham, who spent a long career endeavoring to convince the world that existing legal systems, and especially common law procedure, were archaic.

Bentham's campaign did much to encourage experimental legislation and inculcate the idea that codification of unwritten law is a sure step forward. He probably did more than any other individual toward forcing legal leaders to the half-century of reform which finally carried English courts and procedure from obscure, wasteful, medieval methods to a system which stands today as a model of administrative efficiency.

During that period of agitation and change America struck directly at the dead formalism of common law procedure through the Field code, enacted in 1848 in New York, and copied widely by western states. English reformers profited greatly by this innovation. The central ideas of merging law and equity, of abolishing fictions, simplifying language, and subjugating formality to substantial rights they adopted unequivocally. Having done this, they did not stop, but proceeded to create a practical judicial machine and fix responsibility clearly upon this unified court by confirming to it the ancient prerogative of creating and regulating procedure subject only to a small body of statutory rules which deal only with the larger aspects of the subject.

Working with much the same materials English law reformers created an efficient and responsible judicial system while most of our state courts still labor under the disabilities which were prevalent in the mother country fifty years ago. We have constantly tinkered procedural rules during that half-century, in both code States and common law States, but the reconstruction of the political machinery of the judicial branch which is essential to substantial progress has only been begun.

America's legacy of law and procedure was of the sort approved by Blackstone and condemned by Bentham. The creation of state systems of courts under the federal constitution called for political invention. The English court system at that time was highly centralized, too much so for a compact area, and entirely unsuited to one of our broad and sparsely occupied states. In creating the federal court system something had been borrowed from France, where decentralization had been accomplished not long previously. The new state systems show the same influence. The judges of general jurisdiction were required to visit every county seat so that it was only on appeal that it

was necessary for causes to be heard far from the place of their origin. To serve every village in the county and even scattered farm communities the justice of the peace was given civil jurisdiction in small causes. Consistent with the doctrine that ours was a government of laws and not of men this decentralized system was left to run itself in accordance with statutes and common law procedure and practically without any organized responsibility as to administrative functions.

In the early decades of the republic ours was indeed a new world. The shackles of tradition were burst by the forces of freedom, unbounded natural resources and limitless opportunity. In almost every respect the citizens of the new States lived lives different from those lived by their over-sea kinsmen. The need then for a new American law, adapted to changed conditions, was paramount, and the legislative branch was naturally inadequate to the need. The demand for a law of decisions suited to the new environment was often sufficiently urgent to overshadow the rights of individual litigants in a particular cause. It appeared better, in a considerable proportion of causes in a new State, that the parties litigant, or one of them, should suffer in the case at bar, than that all of the people of the State should suffer indefinitely from a rule of law which had become archaic.

This situation tended strongly to make of our higher courts machines for declaring law and gave them a cast which still strongly persists, though the need is today less urgent. It also tended to develop control over the essential judicial acts of trial judges to an extraordinary degree. The typical State judge of *nisi prius* jurisdiction, though almost free from leadership or restraint as to his administrative conduct, is in a very narrow straightjacket with respect to his essentially judicial acts. The slightest infringement of the autocratic domination of the court having power to reverse his decision results inevitably in discipline. The intention has been to leave the trial judge as little room for discretion as possible, so that he will not be affected by the appealing elements of the case at bar, but will decide in accordance with the body of impersonal law laid down for his guidance. When this fact is given consideration with the equally striking facts of political dependence due to short tenure in most of the states, and dependence upon the legislature for the most minute rules of procedure, the vaunted independence of the judiciary is seen to be something from which the trial judge is excluded.

Until the enactment of the Field code in New York in 1848 there had never been any question as to the right of the judicial branch to formulate rules of procedure. For some time prior thereto the common law

procedure in the leading commercial State of the Union had been falling in public estimation. It was inevitable that some such iconoclastic work as David Dudley Field's should be done and it was fortunate that there was one ready to perform this difficult work so well. It was not the author's fault that it fell so far short of attaining the goal of efficiency in the adjudication of private controversies.

Rarely does so much good and so much evil flow from a single enactment. The good has come from complete severance from common law procedure, over-technical, musty, wasteful, and this good is best exemplified in Kansas and Wisconsin, States where the essential idea of the Field code has been preserved. The evil is seen in the dependence upon legislatures for procedural changes, in common law as well as code States. This too was inevitable, doubtless, in view of the flabby nature of judicial organization, and is not to be blamed upon the great codifier. Field produced a code which sought to regulate only the general features of the practice by statute, leaving the courts to control the details by means of rules. This tended to center responsibility upon the courts.

But it was a case of good seed scattered on stony ground. The judges of the State of New York, unable by reason of their decentralized organization to react to the demands of a skeptical, hurrying, practical age, were nevertheless able to defeat the plain intent of the new code. Their minds were trained to respect for formality rather than love of justice. They were jealous of the new system. In a sense a fight had begun between the people, represented by the legislative branch, and their courts, and the former naturally had recourse, more and more, to comcompulsory legislation until finally the original Field code was submerged by the Throop code of 1877, called properly the code of civil procedure, which took from the courts practically all control of procedure and attempted to regulate every detail through statutory enactments. There has not been a year since without amendments to the code of civil procedure. The legislature annually wrestles with problems alien to its experience and responsibility. The courts annually endeavor to assimilate new rules. The code of civil procedure has been well likened to the upas tree which grows roots from the tips of its branches until eventually one tree becomes a jungle.

New York was the first State to appreciate the harmful division of responsibility between the courts and legislature by which the former attempted to administer justice according to several thousand rules laid down by the latter. In 1899 a committee on law reform of the State

Bar Association recommended "a simple practice act containing the more important provisions of the present code rearranged and revised, supplemented by rules of court."

Gradually the need for restoring to the courts their common law responsibility for regulating procedure by rules of court was realized elsewhere throughout the country. In the common law State of Michigan for instance it was discovered recently by a commission directed to consolidate and revise the statutory procedure that there were over 2700 sections of statutory law. The same commission illustrates the inefficacy of statutory procedure by the struggles of the legislature through five successive sessions to frame rules for chancery appeals. Finally the legislature gave up in despair and directed the supreme court to do the work. There has been no trouble since, and whether this happy result is due to the intrinsic superiority of the judges as draftsmen, or to parental charity towards the court's own offspring, it is not necessary to determine.

In 1909 the American Bar Association's Committee to suggest remedies and formulate laws reported in favor of a short practice act dealing with the larger procedural matters, and leaving the details to rules which the courts would have the power to alter as needed.

More recently the bar associations of several States have backed plans embodying this idea. While there had been little real gain in legislative chambers there has been notable progress in convincing the profession that the delicate structure of judicial procedure must be freed from the crude hand of the legislator. There is more to this than the mere matter of skill in drafting. Courts will always construe the mandates of an alien power narrowly and jealously. To compel judges to do thus or so is practically impossible, and the result is sure to be the piling up of a great mass of rules which will prevent them from doing, in many instances, that plain and simple justice which they would like to do. It results further in multiplying opportunities for trying incidental issues so that the energies of litigants, lawyers, and courts are wasted and substantial justice languishes.

The point is important also because if courts are to be permitted and required to regulate procedure in the interest of substantial justice as against time and energy squandered in warring over formalities, they will necessarily have to develop some administrative faculty. It is obviously unfair to expect the average State supreme court to succeed in formulating the rules of all the courts of the State. There are two reasons for being skeptical of success; in the first place supreme court

judges are almost universally overworked as it is, and secondly they are men trained not to administrative, but to academic, duties.

It is not unlikely that several States will act upon this principle, and then the need for adequate machinery will be exposed. It would seem that the rule making power, implying a large scope for administrative orders, so that judges will be chosen for specialized work, should be vested in an administrative board similar in makeup to the judicial council of the English court system. Such a council should be composed of the presiding justices of the several divisions of the State judiciary.

Restoring the rule-making power, though important, is after all only one step in the direction of making the judges of the typical State all parts of a unified, coördinated, and responsible body for the administration of justice. The American people have distrusted their judges and have taken from them one element after another of independence until they have left them judges in name only. It is not necessary to determine whether this jealousy of judicial power and autonomy was due to unfit service, or whether unfit service has been due solely to this deprivation of power and responsibility. It is apparent that they make a vicious partnership.

The general unfitness of State judicial organizations to the needs of the times is more emphatic than is generally realized. We live in an age of tremendous social and commercial forces. Organizations have been created to monopolize the means for existence. To cope with such potent bodies a powerful judiciary is necessary. In this field the States have quite generally failed. That there must inevitably be a building up of a competent judiciary is a plausible belief. The nucleus of the new order is in fact already in existence and doing valiant service.

Even before the storm of criticism burst upon American courts the new idea had been given birth. It naturally came at the place where the need was most insistent, in the large city. Ten years ago the administration of justice was as ineffectual in Cook County, Illinois, as anywhere in the civilized world. The courts of general jurisdiction, owing to lack of organization and administrative control, to an antiquated procedure overlaid by a great body of highly technical decisions, and by the sensational increase in the volume of business, had become two or three years in arrears, so that commercial interests suffered severely. An equally great evil existed in the mal-administration of justice by a number of the fifty-four justices of the peace and the one hundred constables. Under an amendment of the Illinois constitution it became possible to devise a municipal court for the city of Chicago. The intention was to

relieve the *nisi prius* branch of a share of its commercial causes and to abolish the justices of the peace and police magistrates. To accomplish this the new municipal court was given unlimited jurisdiction in contract causes, and jurisdiction in tort actions to $1000. Its criminal jurisdiction was the same as that of the magistrates displaced, namely, to try in cases of misdemeanor and to examine in cases of felony. No chancery jurisdiction was conferred.

The new court was provided with twenty-seven judges and a chief justice. It was created unlike any existing court in this country and this was due in part to the fact that three business men served on the committee which employed the draftsmen. The court was given an organization centering responsibility and administrative control just as would be done in a commercial concern, and provision was made for statistics and publicity. The act declared that the chief justice "shall have the general superintendence of the business of said court; he shall preside at the meetings of the judges, and he shall assign the associate judges to duty in the branch courts, from time to time, as he may deem necessary for the prompt disposition of the business thereof, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be assigned. . . . . The chief justice shall also superintend the preparation of the calendars of cases for trial in said court, and shall make such classification and distribution of the same upon different calendars as he shall deem proper and expedient. Each associate judge shall at the commencement of each month make to the chief justice under his official oath, a report in writing of the duties performed by him during the preceding month, which report shall specify the number of days' attendance in court of such judge during such month, and the branch courts upon which he has attended, and the number of hours per day of such attendance . . . . . It shall be the duty of the chief justice and the associate justices to meet together at least once in each month, excepting the month of August, in each year, at such hour and place as may be designated by the chief justice, and at such other times as may be required by the chief justice, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them. At such meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them pertaining to the said court, and to the officers thereof, and shall take such steps as they may deem necessary or proper with respect thereto, and they shall have power, and it shall be their duty to adopt or cause to be adopted

all such rules and regulations for the proper administration of justice in said court as to them may seem expedient."

The foregoing provisions mark the beginning of the new era of responsible judicial administration. They created a wieldy body of judges subject as to administrative acts to a single mind. The head of the court was given power to create such branch courts as he might at any time consider necessary. From the entire body of judges he can at all times choose the one best suited to any particular work. The court is given full power, subject to comparatively few regulations in the act, to create its own procedural rules and adopt such administrative orders as appear necessary. The judges are required to meet together to pass upon current business and more particularly to consider all complaints which may be presented.

The act also provided for economical operation by permitting abbreviated orders, so that records are kept on a card catalogue basis.

The opportunity afforded for doing notable work permitted of securing an ambitious, high powered and high priced man for chief justice; he was able, under the convention system of nominating then in vogue, to assist materially in selecting the candidates for the first quota of twenty-seven associate judges on the winning ticket, so the new court was started under favorable auspices.

It was a big task at that. Almost from the start the court was loaded up with business, and a world of work had to be done swiftly and accurately to get this business organized and systematized. The chief justice and friends of the court had alterations made to 44 of the 67 sections of the act at the outset. At the end of two years the court undertook to create a simple, sensible, reform procedure for its first class civil actions to take the place of a system which had undergone slight change since the reign of Queen Anne.

One of the associate judges spent six weeks in the London courts; based upon his report a few rules were drafted which served to revolutionize the knotty problems of pleadings. The plaintiff was required, in lieu of the highly technical common law declaration, to state under oath, and in plain language, the nature of his claim, and the defendant was required to show, in his answer, briefly and under oath, facts tending to prove a meritorious defense. This simple procedure lifted from the commercial life of the second city of the Western world the incubus which had ridden it for decades.

One of the omissions in the act was supplied by Chief Justice Harry Olson, who compiled full statistics of all branches and published them

in an annual report. Subsequently the act was amended to make this work mandatory. The annual reports make a unique and invaluable contribution to the public records of Chicago and to the history of judicial administration.

Specialization was of course utilized from the start, as both civil and criminal causes were included in the business of the court. In civil causes special branches were created for (a) quasi-criminal and citations; (b) forcible entry and detainer; (c) attachment, garnishment, and replevin. The economy of administration at a centralized branch under an expertly selected judge was so conspicuous as to indicate further development of the principle. At that time, in Chicago and in every other city in the country, such semi-related matters as those arising from non-support, desertion, illegal parentage and offenses against minors were dealt with as misdemeanors in the police courts. Intelligent and uniform treatment was impossible. In fact nobody had conceived of them as allied causes all of which affect the family. Nobody had devised a method for treating such causes more seriously than other misdemeanors. So the branch court of domestic relations was an invention, illustrating how improved methods of administration arise naturally when responsibility and power to function are centered in a conspicuous manager. This legal invention was a tremendous success from the beginning. Its best praise is probably its briefest, that it serves to bring families together which under the former regime were forced asunder by the courts.

Each year since has seen some notable addition to the list of specialized branch courts created by the fiat of Chief Justice Olson. The speeders' court collected $10,000 in fines in sixty days and put the breath of life into traffic statutes and ordinances which were hardly enforceable before. Next came the morals branch court to which are taken all the women arrested for offenses against chastity. For the first time an intelligent policy toward these unfortunates became possible, so that the court was no longer allied with vicious elements in bleeding society's victims.

The boys' court promises to be the greatest of the special branches, as it fills the gap between the juvenile court and the regular criminal court. It takes first offenders at the critical age, segregates them from confirmed criminals, and saves as much as possible for useful citizenship.

The small claims court is the latest specialized branch, starting with a civil jurisdiction of $35 and under. In this branch court the little

lawsuits of the community are given a speedy adjudication by a competent and respected judge. Procedure is absolutely informal. Parties do not need lawyers to get justice. The judge examines the witnesses, makes a finding of fact and awards judgment in accordance with law so efficiently that for the first time real justice is possible in causes which cannot bear the expense of jury trials. A brief experience with this innovation indicates that the jursidiction should be greatly extended and that the mere existence of such a practical tribunal results in the paying of bills and the automatic reduction of controversies.

This remarkable court has added to its triumph by calling to its aid the newest of sciences and establishing a psychopathic laboratory. If the percentage of feeble-minded is the same in Chicago as is predicated generally, from 2 to 3 per cent, there are from 50,000 to 75,000 subnormal minds, and if this is so it is not surprising, in view of the fierce competition of metropolitan life, that a considerale number of those arraigned for offenses of various kinds should be among those classed as permanently feeble-minded. For such offenders the conventional fine or short imprisonment is entirely ineffectual; some change of environment which will relieve the individual of responsibilities too severe for his mentality and will power is indicated. Before long it will be possible to sentence these psychopaths to rural industrial colonies where they can live happy and useful lives. The first year's study has shown that a considerable proportion of all offenders are of this class, not actively criminal, but simply unable because of brain lesions to live up to the multitudinous regulations of metropolitan society.

Reference has been made already to the thorough organization, under the American system, of responsibility for the exercise of the essential judicial function. In this respect the associate judges of the municipal court of Chicago are on the same footing as other trial judges. They must yield to the decisions of the appellate and the supreme courts of the State. But unlike the other judges, they are subject to administrative direction as well. They must occupy the branch court to which they are assigned by the chief justice and must report to him monthly as to the amount of time devoted to their duties. Complaints concerning their work may at any time be lodged with the chief justice and may even become the subject of discussion at a meeting of the court.

Some will say that this strips the judge of all independence and others will add that it is humiliating. But it must be noted that the chief justice has absolutely no authority except in the administrative

field. He cannot control a decision in a given cause; a mere hint that he would like to have an associate judge decide thus or so would start a scandal which would ruin the chief justice.

In return for the administrative freedom, or lawlessness, of the typical trial judge, these associate judges participate in the strength and the victories of a powerful and successful organization. Any one of them alone, being but one judge out of three-score and ten in one county, would be insignificant. As a member of the municipal court every judge, just so long as he serves faithfully, has the backing of a strong institution. In so far as he wants to serve efficiently, he is more independent than the isolated and uncontrolled judge, for the latter is frequently rendered pitifully dependent by the futility of his work under a system that lacks coördination and that prevents him, however hard he may work, from keeping his docket from becoming congested.

Powerful as this court is, the slightest complaint made in good faith receives attention. Never before have the people had a really democratic court. An associate judge complained of is given a chance to explain away the complaint as he ordinarily can do readily enough. If he cannot he is given an opportunity to make amends. As long as he shows a right spirit the affair is a secret between himself and his superior. This dependence upon the success of the entire court makes every associate judge jealous of its reputation, so that self-discipline practically relieves the chief justice from the seemingly difficult task of censorship. The very judges who would be least dependable if not subject to discipline are the ones who most look up to the chief justice to extend to them a fatherly charity upon occasions.

With more than 160,000 causes per annum the Chicago municipal court, now increased to thirty-one members, keeps abreast of its calendar. Its money judgments exceed those of all the other courts of the entire State of Illinois, and are greater even than the judgments of the high court division of England and Wales, serving a commercial people numbering about thirty millions.

There is no pretense however that the administration of justice in Cook County is on an ideal plane. On the criminal side it is quite the contrary. The municipal court can do no more in felony cases than hold respondents to the grand jury. In such causes responsibility is divided between the municipal court, the state's attorney, the grand jury, and the criminal court. After the municipal court judge has found probable cause for believing the respondent guilty the powers of darkness and irresponsibility rule. Only 10 per cent of such persons

held for trial are convicted, and half of this number then receive sentences within the jurisdiction of the municipal court judge. That is why Chicago, with machinery capable of doing its criminal court work capably, is still infested with "dips" and "stickup" men.

There is no pretence that the municipal court is perfect. The offices of chief clerk and chief bailiff are elective and to a considerable extent beyond control of the judges, so that more employes are carried than are necessary. Few clerks and bailiffs receive more than $1200 a year. Judges are paid $6000. And yet the average cost per case for clerk hire, and the average cost for bailiff's services, are greater than the cost for the judge's services. In most courts there is of course no means for making a comparison.

The most serious defect in the court is the brevity and uncertainty of tenure and the irresponsible method of selecting judges under the direct primary system of nominating. The first judges of the court were hand-picked. They made a great team. Most of them are gone, and places now are filled by the choices of three-fourths of a million voters. Blind chance plays too great a part in this game. One of the court's best judges was defeated for reelection in 1914 and in 1915 was returned to the court with a majority of 139,000 votes.

It is not claimed either that the extreme form of concentrated authority is ideal. To direct personally the work of thirty associate judges, serving in a dozen branches, and to act as intermediate with the public, the press, the legislature, the city council, the party committees, and half a hundred voluntary social organizations, is too heavy a load for any ordinary chief justice. The court should have several permanent divisions, each with its presiding justice, and these heads of divisions should constitute, with the chief justice, a judicial council, or governing board. The chief Justice should preside over the deliberations of the council and should execute its orders.

But the main fact is that the machine works. Grant that it took an exceptional man to develop this judicial innovation, and it can still be maintained that the ideal organization, as briefly outlined, would permit of comparatively efficient work even by mediocrity. But courts which have organized administrative responsibility become successful to such a degree that they attract ambitious men. Given a sensible means of selecting judges and they will command the highest talent in the legal profession. In a very large city the form of selection should undoubtedly be appointment by the chief justice, the man who has continuing responsibility for the efficient functioning of the appointee.

This is perfectly in accord with short ballot principles, for the entire electorate could wisely select the one local judicial manager, chosen especially for his administrative ability, and he would not only have the best knowledge of the fitness of available candidates, but would have the highest motive for wise selection. This does not mean necessarily life tenure; there is no reason why, after a probationary term, the people should not vote upon the continuance in office of suchappointees. It might also imply selection from a public eligible list made up by the judicial council. Under such a plan the term of the chief justice would be short, say four years. Present experience makes it comparatively easy to formulate a scheme of organization which will produce a court tractable to public opinion, subservient to appellate courts, and independent in the face of anti-social forces.

The Chicago court idea has influenced court reorganization in a number of the larger cities, but in every case the *nisi prius* bench has escaped inclusion. This is only a temporary phenomenon, probably, because in every instance these new courts are successful, and their success points clearly to the need for complete unification and complete administrative control.

The idea has even greater application. Specialization becomes more and more necessary as our law becomes broader and our civilization more diversified. To meet this need with specialized tribunals is to divide judicial power into so many rigid and uncommunicating receptacles that efficiency will be hopeless. There must be specialization, but it must be subject to conscious and expert management; must be secondary to unification. Metropolitan needs are most insistent, but specialized judges will soon be demanded outside of the large cities, and the need can be met only by state-wide unification and administrative control. In the average State the task of directing the entire judicial machine would be no more difficult than is Chief Justice Olson's task. This business management of the courts will not be in conflict with the judicial management already so thoroughly worked out. It will be supplemental, not competitive. It is only along this line that the power of the courts can be increased, making them adequate to modern needs, and at the same time insuring their amenability to popular demands. The people will give power to judges who are subject to discipline, and not to irresponsible judges. This discipline can be of the kill-or-cure variety implied by the judicial recall, or it can be of the constructive, prophylactic, continuing kind which is found necessary to success in commercial enterprises.

The issue thus seen is between political and judicial methods which have broken down under the stresses of modern life, and business methods which have been evolved amidst these same forces; it is the issue between efficiency and pseudo dignity, between medieval mystery and the spirit of modern service.

Secretary, American Judicature Society. HERBERT HARLEY.
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Legislative Reference for Congress. During the past fiscal year the Library of Congress has had available an appropriation for legislative reference service. Such a service is familiar in the several States in connection with the work of the state legislatures. Experiment of it in connection with a national legislature is novel.

The appropriation read "to enable the librarian of Congress to employ competent persons to prepare such indexes, digests and compilations of law as may be required for Congress or other official use;" and the sum granted was a lump sum—$25,000. The description, however, of the service as the preparation of "indexes, digests and compilations of law" was merely by way of coupling the undertaking with one maintained previously for a half dozen years (1906–1911) under this phraseology, and thus to avoid a point of order against the item as "new legislation." The result of the earlier work, done under a much smaller grant, was the preparation merely of an index to the general and permanent law in the federal statutes down through 1907. In reviving the phraseology, the proposers of the new undertaking had no thought of limiting the field to law nor the product to indexes, digests and compilations, though the last term is broad enough to include almost every kind of a statement that would be prepared by a Legislative Reference Bureau. They had in mind a situation that confronts every legislative body: the need of data[1] sought out, digested and brought to bear upon a particular subject. The amount of such data to be considered in the adequate determination of legislation for a State is no small one,

[1]The "data" furnished by a legislative reference bureau are of course only such as may be yielded by material in print, i.e., secondary sources. They are not sought in the field or laboratory as are the data sought by an investigating commission, such as that on industrial relations. A legislative reference bureau undertaking original investigations of this latter sort—e.g., by taking testimony or canvassing for mere opinion—runs the peril of two criticisms: (1) of embarking in projects for which it is not equipped and (2) of promoting mere partisanship.

for in addition to the history and theory of the subject it includes necessarily the experience of other States and, optionally, in certain subjects, the experience of foreign countries. The amount to be considered by our federal legislature includes all of this, and more, in that the experience of foreign countries must necessarily be considered; and the subjects themselves are both broader in range and more intricate. In large degree the data exist in printed sources. They exist in large part in the collections of the Library of Congress. But they are scattered there through over two million volumes, in numerous languages. They are expressed in various ways intelligible only to an expert. And to search them out, to compare them, to "reduce" them, requires not merely ordinary familiarity with the use of books and an adequate linguistic training, but a special technique. To identify them promptly requires also a special apparatus in the way of guides and indexes. Accessible this mass of material has always been: but without these aids it has not been for the legislator fully *available*. The committees of Congress have competent clerks; each senator and representative also a competent secretary. But neither the time nor the ability of these suffices for the search of these foreign sources. Nor does the time, even if the ability, of the senator or representative himself. His need is indicated in the complaint of a senator last fall: he had asked for certain "information," and we had only sent him "some books!" The information was, to be sure, in the books sent. The specific passages were even marked. But he hadn't time to draw them off, digest and compare them. He wanted this done for him, and he thought he had a right to ask it.

The passages were all in English. Had they been in a foreign tongue there would be the further need of a translation. If they included a table of statistics he would want this reproduced, so as to avoid the encumbrance of a heavy volume, and substitute for it a single sheet to be inserted in his manuscript.

To supply these conveniences is not the ordinary function of a library. A library undertakes merely to supply the books, with such suggestion as to the sources appropriate to the inquiry as may be within its abilities. The "information" thus furnished is bibliographic information. Having furnished it, the library leaves the actual research and utilization of it to the inquirer himself. The one step further—to make the search, to assemble the data and to digest, compare and apply these to the subject of the inquiry—is the service expected of a legislative reference bureau.

Our appropriation was available with the beginning of the fiscal

year—July 1. As, however, the demand would be slight until the beginning of the regular session, in December, the full organization of the staff was postponed until then. Certain preliminaries were however desirable: in particular a consideration of questions pending which were likely to receive attention during the session. These might be indicated (1) in the program outlined by, or in behalf of, the administration, (2) by the announced programs of certain major committees (3), by bills actually pending in one House which had passed the other, and (4) by other bills pending which were likely to be passed even in a short session.

Among the subjects of legislation thus clearly in prospect were (1) the conservation bills, so-called; (2) the merchant marine; (3) the government of the Philippines; (4) immigration. On some of these one House had already acted. There were also, in the same category, bills relating to convict-made goods, to railroad securities, to federal aid in road-making, to a bureau of labor, safety and to publicity in campaign contributions. Among the subjects in which the administration had expressed interest was that of a national budget system.

To anticipate the demand for "data" on these subjects, and to identify and, so far as practicable, actually assemble the source material in advance, was the natural course: and it was adopted. In only one subject, however, was an attempt made to draw off and digest the data. This was in relation to the budget. The demand here was likely to be for a description of budget systems in foreign countries. A descriptive account of these was therefore undertaken, beginning with Great Britain. As to other subjects the response awaited the demand, the character and angle of which could not well be anticipated.

One other preliminary was obvious: that is, to consider the field of each of the major committees of Congress and to assign each field, or the several contiguous fields to some one of the staff who should give it special study and be specially responsible for the treatment of it. If not a specialist in the subject matter, such an employee would at least become one in his knowledge of the sources, and his familiarity with the apparatus for the ready use of them. He would inform himself as to what exists in print, recommend material to be acquired, and acquaint himself with guides, indexes and the other aids to quick and certain reference. All of such material and aids in the various executive and scientific departments and bureaus were of course to be noted, and if available in printed form, to be assembled as part of the apparatus of the division.

Demands certain to be expected would involve our own (federal) statutes. A complete, detailed and scientific index to these would therefore be essential. Now such an index did not exist. One "compiled" was issued in 1906: but it consisted merely of a consolidation of the indexes to the biennial volumes. The index prepared by our previous corps and issued in 1908 did attempt to be both scientific and detailed. It was based on a set of schedules—subject headings—prepared in advance and submitted for criticism. The two volumes issued covered, however, only the period to 1908, and merely the permanent and general law. It needed to be brought to date; and to be complemented by an index to the private and local acts, many of which contain provisions of general import beyond the occasion or the locality. A group of indexers applied specifically to this work was accordingly organized and has pursued steadily the construction of these indexes as part of the necessary permanent apparatus of the division.

With the session the particular demands began to come in. Their interest is in their character and range, but also in relation to the apprehensions expressed by opponents of the service itself. For from the time such a service here was suggested there have been such opponents. Some protested that its effect would be to turn the library into a "bill factory." Their objection was met by the entire elimination from the project of "bill drafting," which is a feature of state legislative service, and which was urged here. Others foresaw in the services a mass of material of trifling public import, which would be fed into the Record in the form of speeches either wholly partisan, or at most conducing rather to the personal vanity of the legislator than to the efficiency of legislation. Others anticipated demands purely private, local or personal, which would exhaust its energies without in the least advancing the business of legislation.

The actual demands during the three months of the session may be grouped as follows: for digests or compilations of federal or state statute or constitutional law on various subjects; for comparative studies, compilations, abstracts or translations of foreign law or decrees on various subjects; for compilations on certain questions of legislative procedure—domestic and foreign; for translations and compilations on certain subjects in international law; for digests and compilations on powers of the executive—in Canada, France and Germany—over the tariff; for statistical information on some nineteen subjects, foreign and domestic; for extracts (furnished in the form of photostat reproductions) of various articles in newspapers or periodicals; for lists of bills intro-

duced on certain subjects; for memoranda on bills pending, e.g., the construction of certain words or phrases, the history of previous legislation on the same subject, precedents from other jurisdictions, or the record of subjects within the field of two or more committees; for bibliographic memoranda on certain subjects; and for reports or memoranda involving miscellaneous reference work in coöperation with other divisions of the library. There were some seventeen of the last described. Practically all were pertinent to questions before or likely to come before Congress, even if not involved in legislation actually pending.

This summary indicates the range of the work but not its dimensions; for while some of the inquiries could be answered in an hour and a single typewritten page, others required several weeks of research and a statement covering fifty pages.

A detailed list of the subjects dealt with is not feasible here. An examination of it would be suggestive as indicating how far the actual demands upon the service have justified the apprehensions expressed. Of demands purely personal to the legislator the number has been surprisingly small, at most three or four. All of the others, if not related to legislation actually pending or in prospect, did relate to matters of proper concern to a legislator: the analysis or interpretation of particular statutes, or of statutes dealing with certain subject matter, in which a member of Congress might have a justifiable interest. Of this description were, for instance, the various demands for the State laws on various subjects. Of major importance in themselves and most distinctive in the service required were the questions involving foreign or international law. These alone would have required a service such as this. The number of them, small during a single short session, must of course increase with the increased participation of the United States in the affairs of the world; and the inevitable participation of Congress and of individual members of Congress in the discussion and determination of the attitude of the United States upon these affairs. This latter participation creates a situation here not paralleled in any country with a responsible ministry. In such a country it may be sufficient that the ministry shall be informed; in ours the minority as well as the majority, and each member of both minority and majority is entitled to be. Where there is a responsible ministry the information is supplied by experts who are part of the permanent executive establishment. In our case the initiative in legislation may be taken by a single member of Congress; the legislation may even be carried through in opposition to

the administration. And the data required, even if in the possession of the executive, may not be seasonably available. It is important that they should be in the hands of the member *before* he takes the initiative, or in any way announce his purpose. An understanding of them may enable him to shape his proposal to better advantage. It may induce him to abandon it wholly. In either case he should have it.

The situation at Washington differs, therefore, from that at a capital where all the initiative is taken by a responsible ministry, and the data required by the minority are employed only for the purpose of criticism.

Prominent during the past session were questions arising out of the war: Exportation of munitions, the military and naval expenditures of various countries (including the United States) during the past quarter century; transfer of flag; contraband; exportation and destination of copper; protest; suppression of liquor traffic; the London conference; neutrality. The discussion of the seamen's bill called for compilations upon the wages of seamen in foreign countries; and that on the ship purchase bill for the legislation of foreign countries in aid or governmental control of a merchant marine. The legislation of Russia on this latter subject seeming especially apposite this section of the compilation was printed as a committee document. It played little if any part in the discussion. In a question so large as the one involved, however, the value of data is not always to be tested by the immediate affirmative use to which they are put.

That much of the data actually quoted in debate went merely to swell the pages of the Record must be admitted; that much was desired and employed for purposes merely "partisan" goes without saying. Both are true of the books called for from the library itself. The compensation is that the data sought for and supplied in this way will be apt to be more accurate than that "fed into the record" without the aid of such a service. The personnel of the staff includes men trained in law and research; its spirit and methods are scientific; its object is to state the facts and (so far as conclusions are ventured) the truth. If the legislator uses only that portion of the facts which will support his argument, that is his affair, as the argument itself is his affair. His opponent has an equal opportunity to secure the opposing facts upon which to base an opposing argument.

The omission from the services as legalised of any provision for bill drafting did not prevent some requests for aid in this. In two or three cases the aid was given; but informally, and merely as the personal suggestion of someone of the staff brought into personal relation with

the legislator. I refer, of course, to the actual final shaping of the bill, expert control of which is so earnestly urged by publicists considering the machinery of legislation. Preliminary aid of various sorts is within the regular scope of the service. It may, for instance, report what is the existing law on a given subject and how this has been construed by the courts, and what rules, regulations and decisions have been made under it by an executive department. In reading through the federal statutes (and in the course of their work they will have read through every one of them, from the beginning to date) its corps of indexers note the "usual form" for any bill, clause or paragraph of common occurrence, also the particular word or phrase employed to effect a certain purpose. These notes are at the disposal of any member. And the material the reference bureau accumulates as part of its apparatus may prove serviceable to him in other ways: for instance in determining whether the administrative features of his bill conform to existing departmental machinery, whether the references to existing statutes are exact, and what existing statutes, if any, should be specifically mentioned in the repealing clause.

Such service would be merely auxiliary. The member still determines what is to be carried by the bill, and he draws the bill. The proposal to provide Congress with a corps of expert "bill drafters" continues to arouse opposition and some resentment: the extreme of which was expressed by one senator who declared that a senator who couldn't draw a bill ought to give up his seat. On the other hand our legislative service was criticised on the floor of the House on the very ground that instead of drafting bills it merely made "compilations."

The opponents admit that bill drafters may be useful to the state legislators; but the members of Congress are, they point out, men of larger caliber, more mature and more experienced. Most of them are lawyers. Nor is it important, they say, that the bills introduced be properly drawn, as ninety-nine one-hundredths of them fail on their merits and never get beyond a committee; while those of them which are actually reported have been threshed out in committee, and will later be threshed out further on the floor by skilled parliamentarians eager to take advantage of every error in form as well as of substance.

On the whole the situation as to bill drafting at Washington seems to be this: that a certain number of members of each House, experts in legislation, do not need the service; others might profit by it, but do not desire it; and the rest desire it very keenly. The last group include many men of experience and legal training. They would not admit

themselves incompetent to draft a bill, if that were their only business; but they recognize that in their absorption in the substance of a measure, they may very possibly overlook some defect in the form, which might appear to a critic considering merely the form: and they would not imperil the substance by a defect in the mere form. They would take no chances.

Obviously federal statute-making could not lose, and it might gain, by the service to Congress of a corps of experts who would at some stage consider the structure and phraseology of bills in the same way as do the parliamentary counsel in England. But the stage at which their aid might profitably be invoked would be when the bill is otherwise ready to come out of a committee, and again before its final adoption by either House. Such a corps would utilize the resources of the legislative reference bureau, but it need not form part of it. The library itself has recommended that if established it be attached directly to Congress, as part of the legislative establishment.

Meantime the appropriation for legislative reference work proper has been continued for another year under a phraseology amplified and made general as follows:

"Legislative reference: To enable the librarian of Congress to employ competent persons to gather, classify, and make available, in translations, indexes, digests, compilations, and bulletins, and otherwise, data for or bearing upon legislation, and to render such data serviceable to Congress and committees and members thereof, $25,000."

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Civil Service Legislation—1915. The changes in civil service laws proposed or enacted during the session of 1915 by the legislatures of the several States, present one of the most interesting problems of the practical operation of the governmental system of this country. Prior to January 1, 1915, civil service laws regulating the appointment to public office of State employees had already been placed on the statute books of New York, Ohio, Massachusetts, New Jersey, Connecticut, Illinois, Wisconsin, Colorado and California.[1]

[1] This list does not include the civil service laws applying to cities, counties and other sub-divisions of States. For more complete list and review of the then existing civil service laws see *National Municipal Review*, vol. 3, no. 2, April, 1914.

In the two first named States, the principle that public employees should be selected on the basis of merit had been embodied in the State constitution.

Nearly every State in which the electorate have been given an opportunity to vote for or against the merit principle, the choice of the people has been registered as being largely in favor of the enactment or adoption of civil service laws.[2]

It would therefore seem that the principle that public officials should be selected under the merit system had become firmly intrenched and was generally supported by public opinion in numerous representative States extending across the entire continent.

The legislation enacted in 1915 in the States in which changes have been made in laws bearing upon civil service matters—Connecticut, New Jersey, New York, Ohio, Colorado and Kansas—is not inconsistent with this conclusion. In no instance has the existing civil service system been completely repealed at the 1915 session of the legislatures. Nevertheless, of these five States, in New Jersey alone has there been any distinct advance in the present year in strengthening the existing civil service laws. In New York the only change has been to make an extension of the period of provisional appointments from two to four months, a change of such minor importance that it may be dismissed without further comment. In the remaining three States, Connecticut, Ohio and Colorado, drastic changes have been made in the civil service laws, the result in each instance being to weaken in marked degree the force of the law as a barrier between the office holders in the classified service and the political pressure of forces seeking to gain control of the spoils of office.

When we bear in mind the widespread public opinion in favor of the merit system, the manner in which the changes in the law have been

[2] For example, the several amendments strengthening the Colorado civil service law were adopted by the "initiative" on November 5, 1912, by vote of 38,426 as against 35,282; in Illinois the following "Public Policy Question" was submitted to the vote of the people on November 8, 1910: "Shall the next general assembly extend the merit system by the enactment of a comprehensive and adequate state civil service law thus permitting efficiency and economy?" The vote was 411,676 in the affirmative and 121,132 in the negative. In Ohio on November 6, 1912, the people approved by a majority of more than 100,000 the constitutional amendment incorporating the merit system in the fundamental law of the State. Twelve municipalities and counties of New Jersey have voted on the question of extending the state civil service law so as to make it applicable to local officials. The total vote in favor of the law has been 140,773, against 83,204.

effected becomes significant. In each State there is still a so-called civil service law, although its character seems to have been greatly modified. In each of these three States, Connecticut, Ohio and Colorado, representing different parts of the country, the effect of the legislation of 1915 has been to emasculate rather than to abrogate the existing civil service system.

The apparent result in each case has been to enable the party returning to power in the elections of 1914 to obtain fuller control over appointments in public office than would have been possible under the then existing civil service statutes. The same result has been obtained in the three States in three different ways. A comparison between these presents an interesting illustration of the operation of the governmental machinery of this country.

The original civil service law of Connecticut enacted June 6, 1913, established a civil service commission of three members holding office for the term of six years, whereby the governor could appoint a new member only every alternate year and could not ordinarily obtain control of the commission until toward the expiration of his own term of office. The object of the law, according to its stated purpose, was to provide "means for selecting and promoting every official and employee in the classified service upon the sole basis of his proven ability to preform the duties of his office or employment more efficiently than any other candidate therefor." The law itself applied to nearly all subordinate employees of the State. It had been passed unanimously by a legislature controlled by the Democratic party following the election of 1912, and the original commission consisted of two Democrats and one Progressive Republican.

On March 1, 1915, this law was reconstructed by a Republican legislature. By a series of amendments, the commission has been increased from three to five, thereby permitting the immediate appointment of two new members. The purpose of the law has been altered so that instead of being strictly competitive, it is stated to be "to provide assurance that the election and promotion of every official and employee in the classified service shall be determined in reference to his qualifications and ability to efficiently and satisfactorily perform the duties of his office or employment." Instead of the three highest names alone being certified for appointment, the revised law empowers the commission to submit "such number as it may determine of the names of those whose rating discloses requisite ability to properly perform the duties of the office for which civil service test has been held." Furthermore

each elected official is given unrestricted power to determine whether the law should or should not apply to the subordinates in his office or department. Even where the law may be applicable, it is provided that the examinations for office need no longer be required to be competitive. In addition, the governor is given complete power to "approve, disapprove or reverse the whole or any part of the action of the commission" in reference to "any rule, classification, exemption or refusal to examine." Finally, the provisions have been abrogated, in the former law that prosecutions for violations of the act should be made at the instance of any one of the members of the civil service commission.

In other words, by these amendments, operation of the whole law has been made optional with the appointing officer, non-competitive examinations are allowed, the door has been opened wide to allow the appointment of any name anywhere on the eligible list, the foundation has been laid for turning a minority of the commission into a majority by the naming of two additional colleagues, and, to make assurance doubly sure, the governor has been given an unqualified power to reverse any action of the commission, involving the exemption of any person from the civil service system.

Parallel legislation was enacted at the same time in the State of Colorado, where a situation substantially similar had developed. On March 30, 1907, a Republican legislature enacted the original civil service law of that State. Thereafter the Democratic party became the dominant one in the State and during its period of control, certain amendments to the civil service law were submitted to the vote of the people and were adopted by the "initiative" vote of the people in November, 1912. In 1914 the Republican party came back into power and on April 10, 1915, a new civil service law was enacted to take effect July 10, 1915. By its provisions the existing civil service commission is legislated out of office and provision is made for the immediate appointment of an entirely new commission. All existing eligible lists are forthwith "declared to be null and void and of no force and effect." While the old commission of three members held office as in Connecticut for terms of six years so that one vacancy would occur only every second year, the new law provides that all three members shall serve only from the date of their appointment "until the expiration of the term of office of the governor making said appointments." The prior law required that the person whose name stood highest on an eligible list should alone be certified for appointment. This has been modified so that the selection

may be made from among the three names highest on the list. Another change consists in the enlargement of the group of persons exempt from the provisions of the act.

In passing it may be noted that in three particulars amendments adopted by the vote of the people in 1912 were repealed by the legislature in 1915 and the original text of the law of 1907 substantially restored. The provisions which have thus been abrogated were as follows: (1) The prohibition as to the political activity of office-holders; (2) a penalty heavier than formerly established for the false certification of pay-rolls; and (3) a section automatically providing for the annual appropriation for the purpose of carrying on the work of the civil service commission, thus freeing the commission from the necessity of a perennial legislative vote of supplies.

In Ohio the legislative changes enacted at the session of 1915 resembled those made in Colorado in that the existing civil service commission was legislated out of office and in that the exempt class was broadened so as to take numerous positions completely out from under the civil service law. The distinctive feature of the Ohio process of permitting new political forces to obtain the spoils of office has been to oust all state employees, some 8000 in number, who have taken non-competitive examinations. Such persons, however, may be retained as provisional appointees.

In the State of New Jersey, six minor amendments were enacted in the session of 1915 to the existing civil service law. The most important was the act of March 30, 1915, chapter 120, which provided for a summary method, whereby any citizen upon "presenting a petition to one of the judges of the supreme court of this state" may "cause a summary review of any (alleged) illegal or unlawful action" in reference to the civil service law. The other amendments were as follows: The placing of road inspectors under the civil service system; permitting the selection of laborers from lists prepared by relief committees; regulating the method of submitting to the vote of the people the question whether the civil service law should be applied to particular municipalities; providing that persons in office when a city should adopt the law, should be considered to be temporary appointees; and finally, providing a summary procedure to compel officials properly to submit to the vote of the people the question whether the law should be locally adopted.

The State of Kansas adopted a state civil service law providing for a state commission, classifying the state service and providing for tests

of fitness for appointment to positions. The new state commission is to be composed of one member of the faculty of the state university, the state accountant and the third an officer or member of a state board to be designated by the governor. Following the usual classification, the law exempts officers elected by popular vote, commissioned officers appointed by the governor, officers and employees of the legislature, election officers, heads of departments, members of commissions and boards, officers and persons in the militia, officers and employees of the state printing department, appointees of the courts and judges, assistants of the constitutional executive officers, all unskilled laborers, the heads and professors of state educational institutions. The commission is authorized to exempt one secretary or clerk of each department or of each executive officer, officers of state institutions who are required to be physicians and employees of special commissions of the legislature.

The commission is authorized to make such rules for the conduct of examinations as they may deem fit and to prepare eligible lists for the appointing authorities. One provision fixes the term of office of all appointive state officers, not otherwise fixed, at four years and prior to the expiration of the term, the civil service commission is to make an investigation of their efficiency and fitness for office and approval shall cause such officer to be reappointed.

The large exempt list indicates that the act will not apply to very many positions. The commission is allowed only $1000 to carry on their work.

Among the unsuccessful civil service laws proposed in the several states at the session of 1915, House Bill No. 716, introduced in the legislature of Illinois, is worthy of comment. This bill would have applied to counties of 150,000 or more inhabitants, that is to say, Cook County. By the provisions of this bill the county civil service commissioners could not be removed "except for palpable incompetency, malfeasance in office, or gross neglect of duty, and then only on written charges with specifications and after a member had been heard in his own defence."

The legislative changes enacted and proposed in reference to civil service laws in the several States at the 1915 session of the legislature illustrate the power of the legislature to weaken without destroying the civil service system as a barrier between a triumphant political party and the spoils of office. The unsuccessful measure introduced in Illinois contains a suggestion as to a solution of the problem of government

involved in laws of this type. If a commission, when appointed to office, could be made secure in its tenure, the civil service system of selecting the government employees according to merit could be at least partially protected against such attacks as were successful in Connecticut, Colorado and Ohio.

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Administration of Mothers' Pension Laws. In the effective execution of the various mothers' pension laws and the judicious and equitable administration of the funds appropriated and designed for the partial support of indigent mothers with dependent children, it has, of course, been imperative to utilize appropriate existing agencies or to create new institutions to discharge the functions and obligations created by the terms of the acts. Moreover, to accurately define the limits within which the activity of these agencies may be legitimately exercised in order to adequately realize the spirit and purpose of this new experiment, it has likewise been necessary to accurately define the procedure, a strict compliance with which is indispensable to obtain financial relief, to prescribe the conditions under which relief may be granted, to designate the funds out of which gratuities are paid, to fix the amount of the allowance, and to discourage fraud in obtaining and heedless profligacy in expending allowances by investigations and periodical visits of inspection.

The agencies by which the various mothers' pension laws are administered may, for convenience, be divided into two classes: In 17 States the law is administered by the juvenile court, where one exists, or by the county, district or probate court, functioning as a juvenile court. In all the other States the execution of the law is intrusted to a quasi-judicial or administrative board. Among these latter States, the law is administered in California by the state board of control, assisted by three children's agents, having state-wide authority, and by an advisory committee of three persons in each county; in Massachusetts, by the city and town overseers of the poor, under the supervision of the state board of charity; in New Hampshire, by the county commissioners, upon recommendation of the school board of the district; in Pennsylvania, by an unpaid board in each county, appointed by the governor, and consisting of not less than five or more than seven women; in Kansas, by the board of county commissioners; in the city of St. Louis, by a non-paid board of children's guardians, consisting of

seven members, appointed by the mayor, with the approval of the council; in the State of New York, under the terms of the recently enacted law, by a local board of child welfare in each county, consisting of seven members, one of whom is the county superintendent of the poor, ex-officio, and six others, two of whom are women, appointed by the county judge; and in New York City by a board consisting of the commissioners of public charities, ex-officio, and eight other members, at least three of whom must be women, appointed by the mayor; the state board of charities has general supervision of the work for the entire commonwealth.

An analysis of the functions, character and composition of these agencies discloses certain prevalent characteristics, conspicuous among which are the economy effected by the utilization of existing institutions for the administration of the laws; the lack of centralized control and the gratuitous services of the members of the newly created boards. Pennsylvania, St. Louis and New York are the only States and cities in which distinct administrative bodies have been created to administer the laws and in all cases the members are unpaid. The only States in which the local boards are amenable to a central authority are California. Massachusetts, New York, New Jersey and Wisconsin. In California, the state board of control has direct supervision; in Massachusetts, a detailed statement of expenses is rendered to the state board of charities which also supervises the work and makes the necessary rules and regulations; and in New Jersey before a hearing on a petition is had, the state board of children's guardians examines into the truth of the statements set forth in the petition and reports to the court and when aid is granted the mother and children are committed to the custody of the board; in New York, general supervisory power is vested in the state board of charities; and in Wisconsin, by reason of the state aid granted, the board of control has a limited power of supervision.

The administration of the law is further hedged about by certain statutory restrictions which the executory agencies are legally bound to observe. These restrictive provisions relate to the eligibility of the mother to receive aid, the express conditions upon which relief is granted, and the age of the child upon the attaining of which public subsidies automatically cease. Practically all of the laws provide that before aid is granted the mother must be physically, mentally and morally fit to rear her children; the support of the husband must be removed either by reason of his death, permanent incapacity for work because of physical or mental infirmity or incarceration in a detention institution; the

mother must be an actual resident and must live with her children; financial aid must actually be imperative to save the children from neglect and enable the mother to properly care for them; and in practically all cases the sources of financial income are rigorously inspected to determine the economic dependence of the mother and children.

The procedure in obtaining relief varies rather widely. In general application is either made by a mother who is eligible to receive an allowance or by a reputable resident citizen who may be informed about and interested in the case. When the formal application or petition for relief is filed, the granting of an allowance is preceded by and based on an investigation conducted by an agent or officer of the court or board. The statements made in the application, the actual home conditions and the regulatory provisions enumerated in the law are adhered to and observed in ascertaining the relative destitution of the applicant or petitioner. A written report embodying the results obtained is submitted to the court or board and the investigator is usually present to supply any information demanded or to submit his opinion on obscure and controverted matters. In Illinois the procedure is formal, the mother petitioner and the county board who formally disburse the relief are made parties respondent. In New Jersey, the court examines all who desire to be heard. After all evidence has been heard, weighed and considered the court or board makes an order accordingly.

If the order is in favor of granting relief, the proper fiscal officer of the State, or of the county, town or city appropriates the funds and pays them in conformity with the order. In all the States except California, Massachusetts, Pennsylvania and Wisconsin, the funds necessary to carry out the provisions of the law are paid out of the county treasury and out of money not otherwise appropriated. In Illinois, South Dakota and Ohio these funds are raised by a special tax which in the former State amounts to $\frac{3}{10}$ of a mill on the dollar and in Ohio and South Dakota $\frac{1}{10}$ of a mill. In California $75 per year is paid by the State, in Massachusetts one-third of the allowance where the recipient has a legal settlement and the whole amount in other cases, and in Pennsylvania and Wisconsin one-half the amount within the limits of the appropriation, which is apportioned according to the population of the counties. In New Jersey, the payments by counties are made through the state board of children's guardians.

In most States, the allowance is paid directly to the mother, either in monthly installments, or at such times and in such amounts as are indicated in the order of the court. In a few States, notably in some

of those which have amended their laws, provision is made for the payment of the allowance to an individual or organization approved by the court in case the mother is found to be improvident, careless or negligent. Several States definitely limit the time to six months during which an allowance continues in force, but such allowances may be renewed and extended for a similar period; in other States, payment continues so long as the original order is not modified. In Massachusetts each case is reconsidered at least once each year.

The amount of the allowance is supposed to be sufficient to enable the mother to properly care for her children or to be equivalent to an amount necessary to maintain them in an institutional home and in each State the amount is definitely fixed. In several States the amount which may be expended is definitely limited. This is fixed at $12,000 per annum in Missouri; in Pennsylvania, at $3000 in counties with cities of the first class; $2400 in counties with cities of the second class; $1800 in counties with cities of the third class; and $1200 in other counties; and to meet these expenses an appropriation of $200,000 was made for the biennium of 1913–14; in Utah not to exceed $10,000 per year in any county; in Wisconsin the amount paid by the State to any county in any one year can not exceed $1 for each 30,000 inhabitants, and state aid does not exceed $75,000 per year.

The investigations in most states are conducted by probation officers, agents or visitors appointed by the court or board, and families recipient are subsequently supervised by these same persons. The qualifications of visitors are usually that they shall be discreet persons of good character. In Ohio and Wyoming, agents of associated charities organizations or humane societies are also employed and any person who is employed in conducting such an investigation must be thoroughly trained in charitable relief work.

In Missouri, Ohio, South Dakota and Utah, to prevent the distribution of allowances where they are not actually needed, any taxpayer may file a motion to set aside or vacate an order granting relief. If on the hearing of such motion it transpires that the grant was injudicious and unwarranted, the court or board may discontinue the subsidy.

CHARLES KETTLEBOROUGH.

Bureau of Legislative Information,
Indianapolis, Ind.

Initiative and Referendum—Advisory Vote. The State of Indiana came very near to offering the nation a new experiment in the applica-

tion of the initiative and referendum at the last session of the general assembly. Indiana cannot have the initiative and referendum under the constitution and the possibility of amendment or revision of the constitution has seemed to be remote. The attempt was made therefore, to secure some of the benefits of the system of direct legislation under existing constitutional restrictions. For that purpose the method applied in the nomination and election of United States senators prior to the change in the federal constitution was suggested. The proposition consisted of a series of pledges which each candidate for the general assembly might sign or refuse to sign. To submit a proposition to the people required that 10 per cent of the qualified voters should petition therefor requesting that the proposition petitioned for should be submitted to the vote of the people at the next general election. It was provided that the ballot be prepared in such form as to permit the substance of the subject presented to be placed at the top in not to exceed twenty-five words and underneath the following question: "Shall the general assembly pass a law substantially as stated above?" The voter might indicate his preference by marking in the square opposite the words "Yes," or "No."

It was provided that the returns of the vote should be made in the same form as the votes at the general election and the secretary of state should lay the returns received by him before the next general assembly and certify the vote thereon. Following the forms used in the election of senators, each candidate under the bill, could sign one of three statements as follows:

STATEMENT NO. 1

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I will always vote for any proposition which has received a majority of the votes cast thereon at any general election preceding the regular session of the general assembly to which I may be elected without regard to my individual preference.

_____ _____,

Signature of the candidate for nomination.

or

STATEMENT NO. 2

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I will always vote for

any proposition which has received a majority of the votes cast thereon in my legislative district preceding the regular session of the general assembly to which I may be elected without regard to my individual preference.

_____ _____,

Signature of the candidate for nomination.

or

STATEMENT NO. 3

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I shall consider the vote of the people for or against any proposition presented to them as nothing more than a recommendation which I shall be at liberty to wholly disregard if the reason for doing so seems to be sufficient.

_____ _____,

Signature of the candidate for nomination.

These statements were to be filed with the secretary of state and become a matter of public record. This bill, which would have made it possible to put certain large questions such as the calling of the constitutional convention, the liquor question, and woman's suffrage up to the people and secure the pledges of members, almost passed the general assembly. It went through the Senate without opposition but the lateness of its report in the House prevented it from finally being passed.

Judicial Elections. Illinois passed a new act providing that the names of all candidates for judge of all courts of record in the State are to be placed upon a separate and independent ballot entitled "judicial ticket." It is expressly provided that in all other respects the ballots shall be like the ballots for other candidates at the election. This would seem to indicate that while the ticket will be separate, party designations may still remain.

Distribution of Legislative Bills. The State of New Mexico provided for wider state publicity of bills presented at the last session of the general assembly by directing the publication of all bills, resolutions and memorials introduced in either house and by requiring that a copy of each bill be delivered to the members of the legislature and to the newspapers, to the state educational institutions including the state university and state normals and to not exceeding five persons whose

names and addresses might be furnished by a member of the legislature. Slight provisions have been made of a similar character in other States.

State Banking Board. Hereafter in Indiana all organizations proposing to do a banking business or to engage in conducting savings banks or trust companies must make application to a charter board consisting of the governor, the secretary of state and the auditor of state. The charter board is required under the act to make examination of financial standing and character of the incorporators, organizers or partners, also of the public necessity of the business in the community in which it is sought to be established. If their report is unfavorable, a charter may be refused. A confusing amendment was carelessly inserted which provided that if the applicants will guarantee the deposits the charter board must grant the charter. No definition of the requirement to guarantee the deposits was made and the whole matter is left somewhat indefinite. Heavy penalties are attached to the conduct of the business without the approval of the charter board. The board is authorized to appoint investigators for the purpose of making investigations.

Commission and City Manager Government. Developments relating to the commission and city-manager form of municipal government during the last few months have not been striking. About the usual number of cities have rejected or adopted these schemes. Commission government was adopted in Jackson, Tenn., Asheville and Lincolnton, N. C., Yoakum, Texas, Huron, S. D., and Hoboken, N. J. In both Asheville and Hoboken the contest has been bitter and there have been previous attempts to change to the commission plan. Durham and Elizabeth City, N. C., and Sherman, Texas, have chosen the city-manager form, while Wilmington, Charlotte, and Burlington, N. C., and St. Augustine, Fla., have rejected it. Commission government failed of adoption in McMinnville, Tenn., and in Avon, N. J. Tucson, Ariz., has a city manager, the Republican party having pledged itself to this policy. Although the mayor and council retain the legal power to make appointments, they have promised not to exercise it save upon recommendation from the city manager. A vote in favor of charter revision in Grand Rapids has been passed and the charter commission elected. By a majority of about 2000 it was voted to use the Dayton city-manager charter as a basis for the new draft. In New York State, Saratoga Springs and Mechanicville have adopted commission government as provided in Plan B of the optional charter law, and Newburgh

is to follow Plan C and have a city manager. The city of Cohoes has rejected both Plan B and Plan C and will keep for the present its board of six aldermen as provided in the charter given it by the last legislature.

A list of short-ballot cities, containing those operating under the city-manager plan as well as under commission government, is printed in the *Municipal Journal* for May 20. The list is that published by the National Short Ballot Organization, corrected to January 26, 1915, with the additional cities which have adopted these forms to the end of April. According to this compilation 371 cities in the United States are administered in this way, or approximately 9 per cent of the population of the country. Fourteen of these cities have more than 100,000 inhabitants, the largest being Buffalo. *The American City*, in its June issue, contains a good deal of information on the working of the city-manager plan. Briefly summarized the more important charter provisions and related facts are given for forty-five cities who have a city manager.

In several States general bills have been drawn up relating to the commission and city-manager plan. The optional charter bill in Massachusetts has become a law. In Iowa the McFarlane bill enables towns and cities in the State to adopt the commission-manager form, although it does not create a powerful office, the city manager being a sort of superintendent of public works. Last February a bill was introduced in Indiana providing an optional commission or city-manager charter law of the orthodox variety. A bill, likewise, is before the Missouri legislature to permit the adoption of the commission-manager charter, and, in the event of its passing, courses will probably be given at the University of Missouri to afford training for municipal executives. The Kansas legislature has passed a bill which concerns commission government in all first-class cities which have less than 18,000 inhabitants. In such cities the number of commissioners is reduced to three, counting the mayor as one. His duties are to have charge of the police, fire and health departments; the finance commissioner prepares the budget, collects all revenues and manages city funds; the commissioner of streets and public utilities is the third commissioner. The duties of these officers are thus made the same as those in second-class cities.

Already a city manager has come to grief: in Phoenix, Ariz., that officer has been tried and found guilty of incompetence, extravagance and inefficiency, and has been removed by the city commissioners. A new city manager has been appointed but, owing to his unwillingness to

accept dismissal by the commissioners, the ousted officer for some time prevented the new incumbent from assuming his duties. This state of affairs was remedied, at least for a time, through an affirmation of the commissioners' action in response to an appeal to the superior court. A further appeal from this decision has, however, been made. A recall petition was also started to remove the mayor and two of the commissioners.

A. M. H.

Fixing Responsibility for Fires. In the matter of fire-prevention Commissioner Adamson of New York City is leaving no stone unturned in the effort to make property owners realize their responsibility in taking every precaution against the possibility of fires through carelessness or negligence. For one thing, the outcome of a test case brought by the fire commissioner against the owner of factory buildings where the automatic sprinklers ordered by the fire prevention bureau had not been installed, has finally been decided in the city's favor and the factory owner has been ordered by the appellate division of the supreme court to pay the costs of extinguishing the fire. This is the first case of its kind ever brought by New York City and was first decided in favor of the defendant by the lower court. It was appealed by Commissioner Adamson and the decision unanimously reversed by the higher court. This established the principle that the cost of fire-extinguishing in cases of willful negligence in disobeying fire laws or the special orders of the fire department relating to fire-prevention measures, must be paid by the guilty persons when these occur on their premises, as well as the cost of all loss which neighbors may suffer. Mr. Adamson proposes to submit to the next legislature a bill incorporating this new rule and a provision by which a man who has a fire will be regarded as a public enemy rather than an object for sympathy because he has endangered lives and property.

A. M. H.

A useful table is printed in the April issue of *The American City* (page 348) which sets forth the comparative strength and cost of fire departments for the year 1914 in the sixty leading cities of the United States. This compilation for fire departments, as well as one giving corresponding figures for police departments, has been made by Mr. H. A. Stuart, city statistician of Minneapolis.

A. M. H.

Taking Property by Condemnation. A new departure in the obtaining of property for use by a city is the step taken in Los Angeles where the city council has passed a resolution authorizing and directing the city attorney to proceed with the condemnation of that part of the plant of the Southern California Edison Company wanted by the city for the municipal distribution of the electric power to be generated by the Owens River aqueduct water. Under a law recently enacted the State railroad commission is empowered to conduct such proceedings and to fix the price for utilities taken over under condemnation—a great saving of time as compared with the former necessity for impaneling a jury and trying such a case in a court of law. The price determined by the commission is to be paid out of the sale of bonds to the amount of $6,500,000 which have been voted for a distributing system. A. M. H.

Joint Civic Enterprises. Three small cities in Illinois—La Salle, Peru, and Oglesby—which are included within a six-square-mile congressional township, have combined for a civic center which is being built around one high school. This result came in 1898 after a struggle lasting several years to overcome the jealousy among the three municipalities. The other buildings included in the group are an assembly hall, a manual training and domestic science building, a gymnasium, and a hygienic institute. This latter represents another step in coöperation; that is, the substituting of a central, efficient and well-equipped health office for the three separate health officers who had formerly performed the work somewhat perfunctorily. Another coöperating agency is the infant welfare station. This tri-city center has been achieved through private generosity in coöperation with the final authority administering the township high school and the city councils. A. M. H.

City Planning—New York. In the interest of city planning two advisory commissions have lately been appointed in New York City by the board of estimate and apportionment. The advisory commission to the city planning committee of the board is designed to correlate the work of all municipal agencies which are in any way concerned with the physical development of the city, and will, in addition, consider plans for definite local improvements which may be recommended by the borough authorities. The other advisory commission is that recommended by the heights of buildings commission in its report and is

to serve in arranging building districts and appropriate regulations and restrictions to be enforced in each. These commissions will work under the same office staff and every effort will be made to prevent duplication of work and to coördinate all schemes in developing a city plan.

A. M. H.

Municipal Ice Plants. A little more than a year ago there was only one municipal ice plant actually operating in the United States; now, however, there are several and all report such favorable returns and results that the field of ice manufacture and sale appears to be promising for municipal enterprise. In addition to the plant at Weatherford, Okla., there are at present establishments at New Britain, Conn., Lafayette, Ala., and Fernandina, Fla., with one in process of building at Mayo, Fla. Reports from these places show reductions in cost to consumers and good quality of ice provided. Furthermore, active measures are being taken towards similar undertakings in other places. Under the auspices of the League of Kansas Municipalities the effort is being made to secure from the legislature of the State a grant of power which will permit municipalities to establish and operate ice plants. In Illinois, as well, a measure to allow cities and villages to establish markets and to acquire or build ice houses for supplying ice to their inhabitants is to be submitted to the legislature in order to remove the constitutional obstacles in the way of such an undertaking in Chicago. Several attempts towards municipal ice-making have been made in New York City, but none has been put through. Akin to this activity is another which is urged for New York City—a municipal cold storage plant, not only for dealers, but for householders as well. Such a facility is already provided in Cleveland in connection with its new municipal market. Here refrigeration is supplied to marketmen and cold-storage space is rented to commission merchants and to householders. Thus it is possible to buy at the municipal market any amount of provisions, when they are cheap and plentiful, and store them there for a nominal charge, to be used when prices have risen.

A. M. H.

Purchasing Department. Pending the passage of the bill to establish a central purchasing agency for New York City, purchase of supplies is being undertaken by the mayor's central purchasing committee appointed last November. Should the bill, which was introduced by Mayor Mitchel, fail to become effective, the present committee will be

allowed, for the present at least, to contract for all supplies, materials, and equipment needed by the departments, bureaus and offices which come under the supervision of the mayor and of any others who wish to coöperate. The committee's chairman is City Chamberlain Bruère, and with him are associated departmental representatives who have had experience in purchasing. These latter are divided into sub-committees, each of which is responsible for the preparation of the contract schedule of a specific department, and acts in an advisory capacity on all matters relating to the purchase and handling of the supplies of its particular department. Already contracts have been made for a good many of the larger quantities of articles and have insured a considerable saving of money to the city, as, for example, in the case of the contract to supply three million quarts of milk to various departments during the six summer months at a reduction of over $30,000 as compared with the last prices paid. A. M. H.

Regulation of the Jitney Bus. In this connection a word might be said on the progress of this mode of transportation—the jitney bus. We read of its regulation throughout the land, in El Paso, Texas, Rochester, N. Y., Tucson, Ariz., Washington, D. C., Annapolis, Md., Denver, Colo., Superior, Wis., Warren, R. I., and in the cities of Tennessee. It has resulted in a lowering of street-car fares in Vincennes, Ind.; the street railway company in Paducah, Ky., and in Springfield, Mass. has been obliged to reduce its expenses in order to offset the cut in profits due to jitney busses, in the latter case by a reduction in salaries paid to employees; while in Harrisburg, Pa., and in Richmond, Va., the street railway company has itself undertaken to operate jitneys. Statewide jitney bills have been killed by the Massachusetts and by the Pennsylvania legislatures. In Philadelphia the six hundred cars in its jitney service have been placed under police protection and supervision in order to relieve traffic congestion. Order and temperance in the use of the jitney bus are fast becoming the rule, however, and this chiefly by forcing out drivers who cannot provide themselves with a substantial bond. Bonds vary in amount: in Little Rock, Ark., operatives must furnish a bond of $2000; in Louisville, Ky., $5000; and in San Diego, Cal., the amount is $10,000. Jitney busses first made their appearance in Vancouver, British Columbia, in January, 1915. Two months later there were over three hundred and fifty operating, and the Vancouver Auto Public Service Association was formed shortly afterward. Considerable opposition is encountered in Vancouver, however, because

the decrease of 1,138,333 passengers on the street railways in one month has cut deeply into the profits of the company and those turned over to the municipal government by the company have been diminished by about one-third their usual size.

Along this line it is interesting to note, from the report of the London traffic branch of the board of trade, the activity of motor busses in London. During the year 1913 they carried 734,000,000 passengers, or nearly twice as many as in 1910, and within 90 per cent of the number carried by the street cars and nearly 60 per cent more than by the local steam railroads. In 1913 there were over 3600 omnibusses licensed and of these only 142 were drawn by horses. Although during the ten-year period, 1903–1913, the number of busses licensed had increased by only about twenty-eight, yet the number of passengers carried had grown by about 250 per cent, and the mileage traversed was nearly three times as great.

A. M. H.

NEWS AND NOTES

Personal and Bibliographical

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

Dr. Clarence E. Ayres has been appointed instructor in social science in Amherst College. He will give part of his time to assisting Prof. Raymond G. Gettell in the department of political science.

Prof. J. M. Mathews has been obliged by the press of other duties to resign his editorial charge of the department of News and Notes of the Review. Prof. Charles G. Fenwick, of Bryn Mawr College, has been appointed to fill his place, and also succeeds Professor Mathews upon the board of editors of the Review.

Raleigh C. Minor, professor of international law at the University of Virginia, is lecturing this summer in the summer law school of the University of California. Professor Minor expects to publish this fall a volume on World Federation.

Prof. Herman G. James, of the University of Texas, is to give two courses, "American City Government" and "European City Government" at the University of California during the summer session. Prof. Victor J. West, of Leland Stanford University, is to give two further courses, "Introduction to Political Science" and "Political Parties" during the same session.

Prof. Edward Elliott, formerly dean of the college and professor of political science at Princeton, has accepted engagements at the University of California as lecturer in political science and jurisprudence. He will give a course in "International Law" throughout the year; undergraduate courses, "Introduction to Political Theory" and "American Political Institutions;" and a graduate course, "Theories of the State."

Mr. A. C. Hanford, of the University of Illinois, has been appointed assistant in political science at Harvard University.

Mr. R. E. Cushman, of Columbia University, has been appointed instructor in political science at the University of Illinois.

Prof. O. C. Hormell, of Bowdoin College, will give courses in the summer school in the University of Illinois this year.

Prof. William E. Hotchkiss, of Northwestern University, has been appointed acting professor of political science at Leland Stanford Junior University for the year 1915–1916.

Prof. A. T. Prescott, head of the department of political science at Louisiana State University, will conduct the classes in political science at the approaching summer session. Dr. M. L. Bonham, Jr., associate professor of history and political science, will give the courses in history.

Dr. Walter L. Fleming, head of the department of history at Louisiana State University, will give courses at the George Peabody Teachers' College during the approaching summer session.

At Louisiana State University an innovation is being tried in the courses in political science. Each year a course is offered in comparative government, known as "Political Science 12." For the session of 1915–16 it will be known as 12a, and will deal with governments of the leading countries of continental Europe. In the session of 1916–17 it will be known as 12b and will consist of a study of "the political systems of the principal Latin-American countries, the leading Oriental nations and the most important self-governing colonies." 12a will be based on a text, but as none is available for 12b, the students will be expected to do more collateral reading.

Associate Professor J. S. Young, of the department of political science of the University of Minnesota, has been raised to the rank of professor.

Dr. Quincy Wright, of the University of Illinois, has been appointed Harrison fellow in political science at the University of Pennsylvania.

Dr. Lindsay Rogers, of Johns Hopkins, has been appointed adjunct professor of political science at the University of Virginia.

N. E. Oglesby, of Dublin Institute, Virginia, has been appointed assistant in political science at the University of Virginia for the session of 1915–16.

T. R. Snavely has been awarded the Phelps-Stokes fellowship in the department of economics and political science at the University of Virginia.

Plans have been completed at the University of Virginia for beginning a new school in government, public law and business. The courses will be offered next session. Prof. Thomas W. Page, head of the department of economics, will have charge of the new department and will personally give some of the courses.

D. Hiden Ramsey, who was assistant part of this session in the school of economics and political science at the University of Virginia, has been elected commissioner of public safety under the recently inaugurated commission government at Asheville, N. C.

The University of Virginia summer school is offering this session for the first time courses in international relations, as well as courses in the history and government of South America.

William M. Hunley, adjunct professor of political science at the University of Virginia, has accepted appointment to the chair of political science and economics at the Virginia Military Institute.

The annual meeting of the American Bar Association will be held this year on August 17–19 at Salt Lake City, Utah.

The Ninth Annual Conference of the National Tax Association will be held at San Francisco, August 10–14, 1915. Much importance attaches to this conference this year in view of the widespread and increasing interest shown in the subject of national, state, and local taxation. A feature of interest will be the report of the committee on the federal income tax of which Prof. E. R. A. Seligman is chairman. The coöperation of the treasury department is expected in the discussion of this report which will aim to suggest points where amendment may be

made to secure better administrative results and remove objectionable features.

Another important report will be that of the committee on increase of public expenditures of which Dr. T. S. Adams of the Wisconsin tax commission is chairman. A concise, carefully devised plan for checking waste and introducing economies in fiscal affairs will be discussed. Unusual efforts will be made to secure a full and complete discussion of the various practical problems which confront the state taxing officials. Judge Oscar Leser of the Maryland tax commission will have charge of this session which will be participated in by officials from many States. Naturally the interesting and important experiments and developments in taxation in California and the far western States will be featured for the benefit of the visitors from the east. Numerous special topics of interest will be discussed, including classification of taxable subjects, efficiency in the collection of taxes, taxation of car companies, tax limit laws, valuations of corporations by public service commissions. The report of a committee on situs of intangible property will present the latest thought on that important subject. The usual review of legislation in the various States by M. M. Flannery of the federal trade bureau will be of particular interest in view of the large number of legislative sessions held this year. A study of the meaning of recent action on constitutional amendments will be an instructive feature. The conference will extend over five days with sessions so arranged that time will be given for visiting the exposition. The annual meeting of the American Economic Association will take place during the same week and a joint session has been arranged with that association for the discussion of the federal income tax. The conference is composed of members of the association and official delegates appointed by the executives of the various States and the Canadian provinces, presidents of universities and associations of chartered accountants. Prof. E. R. A. Seligman of Columbia University is president of the association; S. T. Howe, chairman of the Kansas Tax Commission, vice-president, and T. S. Adams of the Wisconsin Tax Commission, secretary.

Under Democratic auspices, the Connecticut legislature of 1913 enacted a thorough-going civil service law applicable to state positions and placed its administration in the hands of a commission of three members. Governor Baldwin appointed as members of this commission two Democrats and one Progressive. The Republican legislature of 1915 has amended the law so as to enlarge the commission to five,

avowedly in order to have the Republican party represented thereon. Other amendments have, in the opinion of civil service reformers, seriously weakened the law by virtually leaving it optional with elective officers and other officials having appointing power whether they will bring their subordinates into the classified competitive service or place them in the exempt class. The governor is also given power to "exempt from any of the provisions of the civil service law any department, board, or commission, or employee or group of employees in the classified service . . . ." The provision in the original act relating to removals in the classified service has been one of the principal points of attack, since all removals had to receive the approval of the civil service commission. This requirement has now been stricken out, and henceforth appointing officials have the right of removal, but must file reasons for each removal and furnish the person with a copy thereof; but no examination of witnesses, trial or hearing is to be required.[1]

The trustees of the Cincinnati Bureau of Municipal Research have elected Mr. H. F. Morse, director, to succeed Mr. Rufus E. Miles, who is now in charge of the Ohio Institute of Public Efficiency at Columbus. Mr. Morse was previously employed by the city in making a survey of the city sewer system. Mr. C. B. Galbreath, former librarian of the Ohio State Library, has been reëlected to this position in the place of John H. Newman. Mr. Galbreath is also in charge at the present time of the Legislative Reference Bureau.

The Ohio Municipal League held its annual meeting in Columbus, February 11–12. The following officers were elected: E. G. Martin, president; Stewart L. Tatum, first vice-president; Thomas L. Coughlin, second vice-president; Henry M. Waite, third vice-president; S. Gale Lowrie, fourth vice-president; F. W. Coker, secretary-treasurer.

The league's meetings were given over chiefly to the subject of municipal taxation, and at the same time a tax conference was called representing the various cities and the civic organizations of the state. Committees were appointed to endeavor to secure legislation which would provide greater revenue for municipalities and propose a constitutional change which would exempt municipal bonds from taxation and provide a limited form of home rule in taxation.

The *Proceedings of the Tax Conference and Fourth Annual Meeting of the Ohio Municipal League*, have now been published (Columbus,

[1] Contributed by P. O. Ray.

1915, pp. 76). Among the papers are "Home Rule in Taxation," by Newton D. Baker, and "Constitutional Restraints upon the Taxing Power," by Lawson Purdy. The secretary of the league is Prof. F. W. Coker, of Ohio State University.

On the 27th of May the second annual conference of the League of Oregon Municipalities was held at the University of Oregon. The subjects of the addresses included "Charter Making," "Excess Condemnation," and "City Planning." On the two following days the seventh annual Commonwealth Conference was held, also under the auspices of the university. Among the subjects discussed were "Coöperation between Nation and State in the Control of Natural Resources," "Credit Organization," "County Administration," and "Good Roads Legislation."

Judge James E. Gorman, head of the juvenile branch of the Municipal Court of Philadelphia, has appointed (March, 1915) four expert women to act as assistant judges. They will have charge of all hearings and examinations of delinquent girls below the age of sixteen years, and will submit a transcript of the testimony in each case brought before them to Judge Gorman who will make the final decision in all cases. This is probably the first instance in the Eastern states of the appointment of women to act as assistant judges in the treatment of juvenile delinquents.

From the *First Annual Report of the Municipal Court of Philadelphia*, for the year 1914, it appears that in the nine months during which the court has been in actual operation 39,397 cases were "brought to final disposition." The division having exclusive jurisdiction in domestic relations cases, heard and disposed of 15,300 cases, and "collected on orders made by the court $345,490.94 "which has been paid to the wives within twenty-four hours after its receipt." Directly or indirectly through this division, 878 "reconciliations" were brought about. In the civil division, 4582 cases were "finally disposed of," the great majority within thirty days from the "date of issue joined between the parties." The juvenile division heard and disposed of 14,374 cases, all of them on the day when brought into court. All hearings in this division are private, and "no record of delinquency is permitted to pass out of the possession of the juvenile court." A highly commended requirement is that one judge shall preside in this division continuously for at least one year. The criminal division disposed of 2141 cases.

The report calls attention to the fact that out of a total of 3599 civil and criminal cases tried, only 38 appeals have been taken to the Superior Court. Detailed statistical tables, the act of 1913 creating the municipal court, and the rules of the court, form a part of this report.[2]

The eighth *Annual Report of the Civil Service Commission of Philadelphia* covers the year 1913. The percentage of persons passing examinations in the competitive class was 41.2 as compared with 63.3 in 1912, the decrease being due to a raising of standards. There were 283 "provisional appointments" as compared with 605 in 1912, a reduction of 53.2 per cent. which was accomplished by holding "sufficient examinations to provide adequate eligible lists." A separate bureau of labor, conducted by an examiner in charge of labor, was established through which "great developments have been made." Political favoritism in this branch of the service has been eliminated and competitive physical examinations for common laborers instituted. Several positions of "high administrative character," carrying salaries ranging from $4300 to $6000, were satisfactorily filled by the merit system. The most striking achievement of the commission was that of "manning the new department of city transit expeditiously" with 140 high class engineers, draftsmen, etc., in the brief period between June 12 and July 1. No appointments were made in the non-competitive class, and the 1706 exemptions were confined wholly to positions of low grade and uncertain tenure in hospitals and the department of wharves, docks and ferries. A new rule was adopted opening to public inspection the examination papers of all applicants, with the marks of the examiners thereon. The Philadelphia commission is "the only one which has taken this advanced step. The results in disarming the criticisms of disappointed applicants have been very gratifying."[3]

The committee on crime of the city council of Chicago, of which Alderman Charles E. Merriam is chairman, has published a valuable report of 196 pages. The committee was appointed in 1914 for the purpose of investigating the frequency of crimes in Chicago and the official disposition of the cases, and also the causes of the prevalence of such crimes and the best practical methods of preventing them. The summary of the findings of the committee is little short of alarming:

[2] Contributed by P. Orman Ray, Trinity College, Connecticut.
[3] Contributed by P. Orman Ray, Trinity College, Connecticut.

the amount of crime in Chicago is shown to be rapidly increasing; the machinery of the law catches petty and occasional criminals, but fails signally to suppress the professional criminal; there are a large number of "hang-outs" which are the meeting places of professional criminals; the value of property stolen and disposed of through the burglars' trust reaches millions of dollars; and on the other hand the police organization and methods are wholly inadequate to cope with the situation. A summary of recommendations follows the summary of findings. The body of the report consists of statistics relating to crime in Chicago, by Edith Abbott of the Chicago School of Civics and Philanthropy; a study of the underlying causes and practical methods for preventing crime, by Robert H. Gault, professor of psychology at Northwestern University and editor of the *Journal of Criminal Law and Criminology*, in which the author shows the relation between the mental and physical condition of criminals and their crimes; finally the report closes with a description and analysis of criminal conditions prepared by Fletcher Dobyns, associate counsel to Morgan L. Davies, the attorney for the commission. Mr. Dobyns summarizes his investigation with the statement that "professional crime is better organized for defense against the law than society is for the apprehension and conviction of the professional criminal. The police department as a body is exonerated from any discredit which the statistics of crime might seem to reflect upon it, but the investigation found that certain members of the police force were "hand in glove with criminals." The report must prove of great service in the attempt to improve the criminal situation in Chicago, and the field of political science would be greatly enriched if similar reports could be compiled in all of our large cities.

Human Nature and Railroads, by Mr. Ivy Ledbetter Lee (Philadelphia, E. S. Nash and Company, 1915, pp. 129), is an attempt to bring the railroads and the general public into greater sympathy with each other. The author was formerly Executive Assistant of the Pennsylvania Railroad, and the chapters of the book consist of lectures delivered on various occasions. "The great problem," he says, "is to establish the point of contact, to make the railroad manager, the employe, and the public in their mutual relations understand one another's point of view." The book is a frank recognition of the necessity on the part of the railroads of meeting the hostile criticism which has been directed against them in recent years and of proving that such criticism and the hostile legislation accompanying it is hampering the efficiency of the

railroads and blocking their efforts to improve the transportation system of the country. While not denying that certain railroads have in the past been guilty of dishonest practices, the author contends that at the present day the railroad system in the United States is fundamentally honest and well conducted, and he pleads for a fairer attitude on the part of the public.

The Road Toward Peace, by Charles W. Eliot (Boston, Houghton Mifflin Company, 1915, pp. xv, 217), is offered as "a contribution to the study of the causes of the European war and of the means of preventing wars in the future." Within recent years Dr. Eliot had taken a prominent part in the work of organized pacifism in the United States, and the present volume is made up in part of addresses delivered in that connection supplemented by letters to the New York *Times* written since the beginning of the war, together with two further addresses and a chapter presenting the correspondence between the author and Mr. Jacob H. Schiff in the fall of 1914. In his early address the author ranged himself with the advanced pacifists holding that a reduction of armaments was impossible until an international court should be set up with a police force behind it. In his public utterances since the outbreak of the war the author has expressed himself as strongly against the bureaucratic government of Germany and the militaristic and aggressive spirit which dominates it. He is not, however, of the opinion that the causes of the war are to be found in the events immediately preceding its outbreak. Rather he finds those causes in the maintenance of monarchical governments supported by national religions, in the maintenance of conscript armies with the inevitable accompaniment of a military caste, in the bureaucratic control of foreign affairs and in the habitual use of force to acquire new territories. National militarism, he holds, should be controlled by an international force under the direction of a European league or council.

It is to be hoped that friendly comments on American life and institutions by foreigners of learning and culture will always be welcome among us. To help us see our national life in its true perspective is the benefit to be obtained from Frederick C. de Lumichrast's *Americans and the Britons* (New York, D. Appleton and Company, pp. xiv, 369; price $1.75 net). The contrast in America between free institutions and the domination of political bosses, between freedom of speech and lack of frank speech, between the absence of formal class distinctions

and the actual aristocracy of wealth on the one hand and culture on the other, between the dreariness of the poorer sections of our large cities and the luxury displayed in our wealthy suburbs, all these contrasts must strike the foreign visitor as they cannot strike those who have grown up under their influence. Prof. de Lumichrast discusses in different chapters "Individualism," in which he makes some pointed remarks upon the tendency in democracies for the individual to stress his own importance and his rights without recognizing his duties and responsibilities towards the State; "Democracy and Militarism," in which he comments on the anti-militaristic spirit of the American people not from "any lack of courage or capacity to fight hard and well, but simply because fighting for fighting's sake does not appeal to the sound sense of the nation;" "Government," in which we are told that "what is wanting in the United States is a more vigorous public spirit," that "it is precisely that eternal vigilance [which is the price of liberty] which is lacking in the Americans;" "Law," in which the author with great frankness tells us that "lawlessness, in the sense of violation, neglect, contempt or evasion of the law is universal in the country;" "Foreign Relations," in which he offers an explanation of the anti-British feeling which he finds still prevalent in the country. In other chapters the author discusses various phases of American social life, Patriotism, Marriage, Woman, Education, The Press, etc. If at times he seems to exaggerate evils, as, for instance, in the sweeping statements that "each man does as he pleases, being a law unto himself," "ordinances, regulations, ... are not intended to be taken seriously," at the same time he recognizes that there is a "strong growth of sound public opinion" in favor of a vindication of the law, and that the education of the people, which is the hope of the country, is steadily progressing; and he gives credit to the constructive spirit which is manifest in the effort to purify national life and to train the multitudinous foreign components of the country in the ways of good government.

America and Her Problems by Paul H. B. d' Estournelles de Constant (New York, The Macmillan Company, 1915, pp. xxii, 545) is a volume of impressions of America by one who is best known among us for his work in the cause of international peace. It is a book which will make the average American impatient. The descriptions of the country are sketchy and are interspersed with comments of places and people which are often lacking in insight, and which impress the native as being snap

judgments and obvious criticism. But these faults, though serious to the casual reader, are largely compensated for by the spirit of idealism which pervades the book. The first edition appeared in French in 1913, and the present edition is a translation with amendments. It is, as the author says, "an act of faith in American and in human idealism," and its object is to make the United States "realize the incalculable service they could render to civilization, as well as to themselves, by remaining faithful to their peace policy." The author's solution for the Mexican situation is a collective intervention of the Powers—a step which he asserts would not be in contradiction to the Monroe doctrine, and which the Mexican people would not regard "as a danger or an offense, but as a mark of friendliness." His judgment upon the Japanese question, in the acute form it had reached in 1913, is that there is no rational possibility of the United States attacking Japan or of Japan attacking the United States, the latter impossibility being due to the fact that, even should the jingo spirit prevail in Japan, an attack upon the United States would threaten England in a way which would ipso facto break the Anglo-Japanese alliance and range the British Empire, as well as France, Russia, Holland, and Germany, against Japan. The author's view of militarism in the United States is that the danger for this country lies in trying to outstrip other countries in naval power, with the consequent danger of creating a spirit of aggression and a reliance upon might. On the whole, however, he is optimistic, and it may serve to stimulate our efforts for reform in government and for a high-minded foreign policy to know that other countries are looking to us to initiate a new era from which their inherited traditions of suspicion and jealousy and consequent militarism have debarred them.

The Progressive Movement, by Benjamin Parke DeWitt (New York, The Macmillan Company, pp. 376, price $1.50), is the first of a new series of the *Citizens Library of Economics, Politics and Sociology*, edited by Richard T. Ely. It is offered as a "non-partisan, comprehensive discussion of current tendencies in American politics," and it is the purpose of the author to make clear the distinction between the Progressive party and the larger progressive movement for political reform pervading all parties. The progressive movement the author finds to be made up of three tendencies: first, the insistence by the best men in all parties that corrupt influence in government must be removed; second, the demand that the machinery of government be so changed as to make it easier for the people to control it; and third, the conviction that the

functions of government must be extended to relieve social and economic distress. The author then proceeds to show the meaning of the progressive movement by a sketch of the political history of the country, and next takes up the recent manifestations of that movement in the Democratic, Republican, Progressive, Socialist, and Prohibition parties. These chapters will be found very valuable as material for courses on the history of political parties since the Civil War. In subsequent chapters the author discusses the progressive movement in national, state, and municipal politics, and here will be found much helpful material for courses on present political problems. The author is frankly sympathetic in his treatment of the subject, and while some persons will be disposed to dispute with him whether all steps of the movement are truly progressive, i.e., advances in the desirable direction, and others will contest the expediency of this or that practical measure, e.g., certain applications of the initiative, referendum and recall, still no one will contest that the various phases of the movement have been clearly and impartially set forth and that the author has contributed in a material way towards the study, both scientific and popular, of so-called "reform legislation." The work will be read with all the greater interest as a companion volume to the recent contribution on *Progressive Democracy* by Herbert Croly. Mr. Croly expresses ideals; Mr. DeWitt deals with the practical steps towards the ideal.

Equitania; or, *The Land of Equity*, by W. O. Henry, a surgeon of Omaha, Nebraska (privately printed), is a discussion of problems of the day—social, moral, political, and religious. The author creates a fictitious land where distinct groups of persons, Buddhists, Christians, Mohammedans, and Jews, have arrived in search of a new country and there agree to work out their destinies together. With this Utopian setting the author draws up an ideal constitution for the realm, in which social and moral precepts figure side by side with legal provisions. The inconsistency of discussing the problems of a community of a hundred million and of suggesting how they might be remedied in a community of four thousand, is overlooked, although the problem of the unemployed could not possibly be the same in the two countries. Without specifically advocating Socialism the author calls upon the government of the State to provide for each individual the necessities of life by furnishing him with "suitable employment." The booklet, while containing many judicious comments on current questions, does not come within the class of contributions to political science.

The Diplomatic Protection of Citizens Abroad; or, the Law of International Claims, by Dr. Edwin M. Borchard, law librarian of Congress and lately assistant solicitor of the department of state, is announced by the Banks Law Publishing Company. It is a volume of 950 pages, large octavo, and is priced at $8. This is a work dealing with a subject that lies partly in the field of international private law, in so far as it involves claims brought by individual citizens, and partly in the field of international public law. The work is divided into four parts: Part I which deals with the rights of citizens and of aliens and with the international responsibility of the state; Part II which deals with the exercise of diplomatic protection; Part III which treats of the object of protection—the person and property of citizens; and Part IV which defines the limitations on diplomatic protection. Apart from the timeliness of the publication of this work students of international law will welcome a new volume from the pen of one whose contributions are always marked by scholarship of the first order.

In *The Orthocratic State*, which has for a sub-title, "The Unchanging Principles of Civics and Government," by John Sherwin Crosby (New York, Sturgis and Walton Company, 1915, pp. 166), we have a contribution to the theory of political science in which the author seeks to determine, in answer to the Anarchists, by what right, if any, the compulsory state is maintained, "by what right any majority can compel an unwilling and otherwise unoffending minority to unite with them in organizing and maintaining the State." After disposing of the several classical theories of the State the author proceeds to draw a distinction between society and the State, the former being "that natural, uncontrived association into which mankind are unconsciously brought and in which they are ever held by immutable conditions of a common existence upon the earth," and the latter, the State, being "an artificial, organized association formed by the power and according to the will of man." Citizenship of the State does not release men from the obligations of society, that "preëxistent, indissoluble association of mankind." The "natural rights of man" are, in consequence, not "mere metaphysical conceptions" but "actual, necessary physical conditions of normal human existence." What is this but an echo of Aristotle and the schoolmen whom the author summarily dismissed in his first pages. Subsequently, however, in explaining "a natural right" the author asks us to conceive of "a man alone upon the earth" and the coming of other

men, and here we have echoes of Hobbes and Rousseau, also previously condemned.

The basis of the State is collective self-defense on the part of the individuals composing the State. Upon this basis the author establishes the four functions of government—the Peace-preserving function, the Right-preserving function, the Public-serving function, and the Self-preserving function which has for its object the maintenance of the authority of the State. The difficulty of supporting all of these functions, especially the Public-serving function, upon the primary right of self-defense, the practical thesis that there are no "quasi-public functions" which may be farmed out to private persons or companies, the theory that "land values are social" and belong to the people collectively, the denial to the State of a right to create corporations "for any purpose whatever," the condemnation of tariff and excise taxes in principle—are all weaknesses in the superstructure of a State whose foundation stones are illogically fitted together. But if the author's point of approach is not scientific and if his deductions are not always justifiable, if, it is suspected, he has a theory of land taxation to advocate, his volume is nevertheless original and stimulating and will be read with interest by the student even though he may not agree with its conclusions.

Professor Münsterberg has written another work on the war—*The Peace and America* (New York: Appleton, 1915, pp. 276). The argument is obviously directed to Americans of pro-Ally sympathies, but it is a striking fact that a volume prepared by a psychologist should, like his volume entitled *The War and America*, be of a character almost sure to have an effect opposite to that which is intended and desired. The work abounds with unsupported assertions which therefore insult the intelligence of the reader. Professor Münsterberg is still unable to see that Americans do not care for his opinion as to the personal qualities of the Kaiser, nor are they impressed by the fact, which is stated with care, that the author enjoys his personal acquaintance. No reference is made to the statement that has been made that for years the author has been a salaried agent in America of the German government. The author states his belief that in 1914 no "really binding" treaty between Germany and Belgium existed—but aside from this the validity of the argument from necessity as justifying the invasion of that hapless country is frankly asserted. In closing Professor Münsterberg asserts that

because of America's attitude and actions in the war, the country has become foreign land to German-Americans. These five million voters have been thus far powerless "because their political energies have never been concentrated in common action." And he adds: "If the German element, backed by a united organization, should become a serious factor in the practical political life of the nation, if those who preach hatred against Germany were defeated in elections whenever possible, if a hundred or more Democrats and Republicans of German descent were carried into the House, a repetition of that unspeakable moral misery of the twenty million German-Americans would become impossible." What can one say of a suggestion such as this?

America to Japan, edited by Lindsay Russell (New York, G. P. Putnam's Sons, pp. 318, price $1.25), is "a symposium of papers by representative citizens of the United States on the relations between Japan and America and on the common interests of the two countries." It is a companion volume to *Japan to America* edited by Naoichi Masaoka and published in March, 1914. The list of papers is a long one and includes the names of a score or more of men who have filled high places in American public life. The purpose of the volume must explain the brief and unscientific character of the articles it contains. Many of them are no more than expressions of good will towards Japan, others stress this or that element in the relations of the two countries, chiefly the question of Japanese immigration and the rights of the Japanese aliens in the Pacific States, while but few have any intrinsic value. "The Pacific Coast Peril," by Francis B. Loomis, former assistant secretary of state, contains many shrewd remarks and sets a standard which, if attained in other papers, would have made the volume one of permanent value. Mr. Loomis claims that under the present "gentlemen's agreement" with Japan the number of Japanese in California remains practically stationary, and that if it were not for the propaganda of hate carried on by interested parties, the whole question would disappear. To this end he advocates giving the Japanese now in America the ballot and citizenship, in order to make the politicians curry favor with them instead of harrying them. Apart, however, from the merit of the individual papers, it can hardly be doubted that the volume, if translated into Japanese, would help greatly to remove misunderstanding in that country of the policy of the United States towards it, and would enable its people to distinguish between the shal-

low comments of jingo newspapers and the mature judgment of representative Americans.

Germany Since 1740, by George Madison Priest, professor of Germanic languages and literature in Princeton University (Boston, Ginn and Company, pp. 199, price $1.25), is a convenient summary of the principal facts in modern German history "intended primarily to offer a background of German history to students of modern German literature," but also of considerable value to the general public as presenting the historical basis for a better understanding of German foreign policy of recent years. Successive chapters deal with political and social conditions in Germany in the early decades of the eighteenth century, with the reign of Frederick the Great, with the decline and degradation of Germany during the years from 1786–1808, and with the regeneration of Germany and the progressive steps in the development of constitutional liberty and national unity. The text is accompanied by maps, together with a chronological table of important events and a selected bibliography. While not a contribution to historical literature the volume will serve as an introduction to modern German history and will help to disentangle for the lay reader the complexities of German state and national life.

Few persons are as competent as Dr. E. D. Durand to give an intelligent opinion upon the policy of the law in regard to trusts, and his recent volume *The Trust Problem* (Cambridge, Harvard University Press, 1915, pp. 144), is therefore most welcome. The policy of laissez faire he considers suicidal. The problem, then, becomes one of regulation or prohibition. The difficulties of a policy which permits the free formation of trusts, but seeks to regulate them, are shown to be exceedingly great. "The policy of permitting trusts to exist might result in the extension of trusts over almost the entire field of industry. It might also result in practically complete monopolization by each trust of its particular field. The determination of costs and profits over the multifarious field of industry would require immensely elaborate investigations and would involve extraordinarily difficult questions of judgment. Proper adjustment to the ever varying conditions of demand would be almost impossible. A vast governmental machinery for fixing prices and profits would have to be superimposed upon the machinery of private business. Governmental ownership on a vast scale or even

complete socialism might readily be the outcome of this policy." On the other hand, Dr. Durand considers it feasible to prevent by law the more formal types of combinations and of contracts in restraint of trade. It will be difficult to prevent the less formal understandings which restrict competition, but these are not generally very effective in maintaining monopoly. Whatever the policy adopted, Dr. Durand sees in the taxing power a further source of effective control.

Population: A Study in Malthusianism, by Warren S. Thompson, instructor in sociology in the University of Michigan, appears as No. 3 of volume 63 of the Columbia University *Studies in History, Economics and Public Law*. The author first explains the meaning of Malthusianism as expressed in the sixth edition of the Essay on the Principle of Population rather than in the pessimistic form of the first edition. This is followed by a statement of the views on population held by some of the recent writers on Ecomonics. Subsequent chapters deal with wages and prices, in which the author attempts to show the relations of wages and prices within the last two decades, crops and other food supplies, the movement of population from 1860–1910 and its growth in relation to food supply, and finally the outlook in the light of the law of diminishing returns. The essay is of especial interest in view of the conclusions which the author reaches, namely, that Malthus was essentially correct in his statement of the law of population and that even in the United States the population cannot continue to increase at its present rate without being more and more subjected to the actual want of food, unless an increasing, instead of a decreasing, proportion of the population becomes rural, in which case our present standard of living must be simplified.

Nationalization of Railways in Japan, by Toshiharu Watarai, formerly assistant councillor in the imperial board of railways of Japan, appears as number 2 of volume 63 of the Columbia University *Studies in History, Economics and Public Law*. After a preliminary survey of the development of the economic life of modern Japan the author presents a valuable sketch of the historical development of the railroads of Japan down to their nationalization in 1906. This is followed by an explanation of the reasons for nationalization and the basis on which it was carried out. Subsequent chapters deal with state finances and the nationalization of railroads and with the policy of Japan in regard to freight and passenger rates. While the peculiar economic and social

conditions of Japan make it impossible to draw any positive inferences with respect to the advantages of the nationalization of railways in the United States, the book cannot but throw light on the discussion of that question. The author's conclusion is that "the nationalization of the Japanese railroads has not had the favorable effect generally expected, either upon the national finances or upon the industrial development of the country," and he offers proposals for reform in the granting of charters to private railroads side by side with state railroads, and in the acceptance of provincial loans for the building and betterment of the state railways.

Growth of American State Constitutions from 1776 to the end of the Year 1914, by J. Q. Dealey (Boston, Ginn and Company, 1915, pp. 308), is a valuable addition to our means of studying the comparatively neglected organic laws of the various States. The present work is not merely a new edition of the monograph by the author which was published as a supplement to the *Annals of the American Academy of Political and Social Science* for March, 1907, but is considerably amplified and largely rewritten. Part I is devoted to the "History of State Constitutions;" Part II describes the "Provisions of Existing State Constitutions," while Part III outlines the "Trend in State Constitutions." The appearance of the work at the present time is especially welcome in view of the rather widespread movement towards the revision of state constitutions.

Government for the People, by T. H. Reed (New York, B. W. Huebsch 1915, pp. 265), is a comprehensive treatment of certain problems of American government, national, state, and local. The book was originally proposed as a series of extension lectures on contemporary political problems. The different chapters, therefore, have a somewhat disconnected and slightly miscellaneous character. They contain little that is new, but are written in a popular, fluent style which should appeal to the general reader and give him a clear view of our government from many angles. Among the most interesting chapters are those on "The Long Ballot as a Cause of Corruption" and "The Disorganization of State Administration."

The American Bar Association has begun the issue of a quarterly entitled *The American Bar Association Journal*, the first number being dated January, 1915. The pages of the *Journal* will be devoted to announcements and transactions of the association, including those of

affiliated bodies which have been organized under its auspices, such as the Association of American Law Schools, the American Institute of Criminal Law and Criminology, and the Conference of Commissioners on Uniform State Laws. The *Journal* is to be sent without charge to all members of the association. To others the annual subscription is three dollars. The place of publication is the Munsey Building, Baltimore, Md.

A second edition of Beale and Wyman's *Railroad Rate Regulation* has appeared from the press of Baker, Voorhis and Company.

In view of the relations between the United States and Mexico, a timely monograph is that issued under the title *The Doctrine of Intervention*, by H. G. Hodges (Princeton, N. J., The Banner Press, 1915, pp. 288). The author defines intervention as "an interference by a State or States in the external affairs of another State without its consent, or in its internal affairs with or without its consent." He goes into some detail in describing conditions which preceded various historical interventions or proposed interventions. The narrative is brought down to the present situation between the United States and Mexico and some account is also given of the various interventions in the present European war. The author is strongly of the opinion that "interventions, otherwise justifiable, should be undertaken by several States acting in concert." In the appendix are printed the neutrality proclamation of President Wilson in the European war, the correspondence between Secretary Bryan and Chairman Stone of the Senate Committee on foreign relations on the neutrality of the United States, and a select bibliography of the subject.

State Documents for Libraries, by E. J. Reece (University of Illinois Bulletin, Vol. XII, No. 36, 1915, pp. 163), is a convenient and useful handbook not only for libraries but also for anyone who has occasion to make use of the material to be found scattered through the official publications, reports and documents of the various state officers, bureaus, boards, and commissions. It contains, for example, a list of compilations of state statutes and a list of state blue books. One chapter is devoted to an explanation of the methods of distribution of state documents found in various States. It shows graphically the loose and ill-organized methods in vogue and the need for centralized distribution.

War Obviated by an International Police (The Hague, Martinus Nijhoff, 1915, pp. 223) is a series of essays written in various countries dealing with this proposition of the pacifists to prevent war. It might be argued that this method would mean the undertaking of war to prevent war, but this would probably be a superficial criticism. The proposition deserves more careful consideration, in which the publication of this volume will assist. Among those whose contributions to the consideration of this question are included in the book are C. van Vollenhoven, S. von Houten, Theodore Roosevelt, Nicholas Murray Butler, A. H. Fried, Leon Bourgeois, Walther Schücking, T. J. Lawrence, Norman Angell, and Sir Edward Grey.

Political scientists as well as historians will welcome the new *Riverside History of the United States*, published by Houghton, Mifflin and Company in four volumes. Volume I, by Prof. Carl L. Becker, is entitled "Beginnings of the American People;" volume II, by Prof. Allen Johnson, is entitled "Union and Democracy;" volume III, by Prof. William E. Dodd, is entitled "Expansion and Conflict;" and volume IV, by Prof. Frederic L. Paxson, is entitled the "New Nation." The editor of the series is Professor Dodd.

The British North American League is the title of a brief monograph by Prof. Cephas D. Allin of the University of Minnesota. It is published by the Ontario Historical Association and is an introductory study of one phase of the history of the Conservative party in Canada. Among the research publications of the University of Minnesota now in press is a monograph by Dr. M. N. Orfield on *Federal Land Grants to the States, with special reference to Minnesota.*

Operation of the Initiative, Referendum, and Recall in Oregon is the title of a volume by James D. Barnett, professor of political science at the University of Oregon. It will be published by The Macmillan Company during the course of the summer.

A feature of the literary history of the European war has been the semi-official reports from time to time made by an "Eye-Witness," present with the British general headquarters, of the movements and operations of the British army and of the French armies in immediate touch with it. These vivid narratives, as made public by the English press bureau, and covering the period from September, 1914 to the

end of March, 1915, are now published in a single volume by Longmans, Green and Company. (New York, 1915, pp. 303). This volume will undoubtedly be one of permanent value.

The ninth volume of the publications of the American Sociological Society (University of Chicago Press, 1915, pp. 202) is of especial interest to the political scientist. The papers and discussions which it contains are devoted to the general subject of "Freedom of Communication," the sub-titles being "Reasonable Restrictions upon Freedom of Assembly," the principal paper being presented by Hon. Arthur Woods, police commissioner of New York City; "Reasonable Restrictions upon Freedom of Speech," the principal paper being by Mr. James Bronson Reynolds, counsel for the American Social Hygiene Association; "Freedom of the Press in the United States," discussed in a most able paper by Prof. Henry Schofield of the Northwestern University; and "Freedom of Teaching in the United States," the principal papers being by Prof. U. G. Weatherly of Indiana University, and President Henry Pritchett of the Carnegie Foundation for the Advancement of Teaching.

A rather remarkable title page is that of Mr. John Edward Oster, "*The Political and Economic Doctrines of John Marshall*, who for thirty-four years was chief justice of the United States. And also [*sic*] his letters, speeches, and hitherto unpublished and uncollected writings." (New York, Neale Publishing Company, 1914). In point of fact, very few pages of the volume are from Mr. Oster's own pen. The vast bulk of it consists of speeches and letters of Marshall, which are furnished without comment, save as to the source from which they were drawn by the editor. Though the majority, about one hundred and fifty in number, of the letters have been previously published and none of them is particularly illuminative of the great chief justice's mental processes, yet it will be serviceable to have them together between two covers. Unfortunately they are arranged in a very haphazard fashion. The index, on the other hand, is fairly good.

The Johns Hopkins press has issued under the title of *The Diplomacy of the War of 1812* a volume of lectures given in 1914 at the Johns Hopkins University by Frank A. Updyke, professor of political science at Dartmouth College.

Some Observations on the Economic Interpretation of Early Roman History, by C. W. Macfarlane, has just appeared from the press of the J. B. Lippincott Company, of Philadelphia. It is a paper-bound book of sixty-two pages, which purports to show the importance of adequate training in philosophy and economics to every student of the larger historical problems. In reality it is an attack upon Prof. Tenney Frank's late volume on *Roman Imperialism*. It would seem that many of the criticisms of Professor Frank's book are scarcely justified.

The Newberry Library, Chicago, has issued as Bulletin No. 4, a "List of Documentary Material Relating to State Constitutional Conventions, 1776–1912," compiled by Augustus H. Shearer, Ph.D., of the library staff. The items number altogether 615. A limited number of copies for the use of scholars interested is available upon request.

The Collectivist State in the Making, by Emil Davies (London, G. Bell and Sons, 1914, pp. 267), is a handbook describing the activities of the modern city and State in social reform by an ardent advocate of state socialism. Although Mr. Davies has collected in convenient form a number of interesting facts concerning social and industrial legislation, his treatment is somewhat scrappy considering the importance of the subject.

The Diplomacy of the War of 1914, The Beginnings of the War, by Ellery C. Stowell, assistant professor of international law at Columbia University, is announced as forthcoming. The subject is introduced by a narrative of recent European history and this is followed by ten chapters which analyze and rearrange the official papers and present them as an original chronological narrative. A series of questions and answers is designed to present the material in a form for ready reference, while the volume concludes with a carefully selected list of original documents. The work is to be followed by two other volumes, one on the diplomacy during the war and one on the negotiations attending the close of the war.

An official *Cumulative Index to State Legislation*, containing a complete record and a numerical and subject index of all bills introduced in all state legislatures, is being published by the Law Reporting Company, New York. It is compiled and published for the coöperating libraries and legislative reference departments, under the direction of the joint

committee on national information service of the National Association of State Libraries, American Association of Law Libraries, and Special Library Associations.

The Revue Internationale de Sociologie for May, 1915, contains a translation of the article by Prof. J. Salwyn Schapiro, entitled "The War of the European Cultures," which appeared in the April *Forum*.

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Constitutions—Amendment. State vs. Marcus. (Wisconsin, April 15, 1915. 152 N.W. 419.) Where an existing constitution prescribes a method for its own amendment, an amendment thereto to be valid, must be adopted with strict conformity to that method. Where the entries in the journals of the houses of the legislature are defective in such a manner as not to show the exact proposition that was submitted to and passed by the legislature, there is a fatal omission to comply with the constitutional requirements, and it is of no avail that the people by their votes subsequently approve the proposed change. Where no other method is provided for by the constitution a determination of whether an amendment to the constitution has been validly proposed is within the powers of the courts.

Delegation of Legislative Power. People vs. C. Klinck Packing Co. (New York, February 5, 1915. 108 N.E. 278.) An amendment to the one day's rest in seven law which exempted from the operation of the law employees in certain occupations "if the commissioner of labor in his discretion approves" was held to be an unconstitutional general delegation of legislative power. "The legislature cannot secure relief from its duties and responsibilities by a general delegation of legislative power to someone else." Under its terms the commissioner of labor has the power without check or guidance to veto the entire provision or to say whether it shall take effect in any, all or no cases. It was held, however, that this particular provision was not so intimately connected with remainder of the law as to render the entire law unconstitutional.

Delegation of Legislative Power. State vs. Briggs. (Utah, March 19, 1915. 146 P. 261.) The local option statute does not delegate legislative powers to municipalities. The voters are merely given the option of choosing sale or no sale, and when either is chosen the law determines the method of control.

Due Process of Law. Thrift vs. Laird. (Maryland, January 14, 1915. 93 A. 449.) An act establishing a Public Service Commission, which provides that the salaries of its members and its general counsel shall be paid in part by the State and in part by the city of Baltimore, does not as far as it provides for payment of salaries by the city, deprive the city of its property without due process of law.

Elections—Preferential Voting. Orpen vs. Watson. (New Jersey, April 21, 1915. 93 A. 853.) A statute requiring a person voting for commissioners of a municipality to express a first choice for each office to be filled, under penalty of having his ballot declared void, does not contravene the constitutional provision that every citizen is entitled to vote for all officers elective by the people. A provision of the same statute allowing each voter to express second, third and fourth choices which are to be added in their order to the first and other choices to the extent necessary to ascertain which candidate has a majority of all votes cast, does not allow of voting for the same candidate for the same office more than once, for no voter can cast more than one effective vote for the same person for the same office.

Equal Protection of Laws—Discrimination against Aliens. People vs. Crane. (New York, February 25, 1915. 108 N.E. 427.) A statute prohibiting the employment of aliens on public work by a State or municipality or a contractor thereof does not unconstitutionally discriminate against aliens. The moneys of the State belong to the people thereof who are citizens, and aliens are not members of the State as a body corporate. The State may discriminate between citizens and aliens in the distribution of its own resources; for the common property of the State belongs to the people thereof, and in any distribution of that property the citizens may be preferred. The equal protection of the laws is due to aliens as well as to citizens, but "equal protection" does not mean that aliens must share in the common property of the State on the same terms with citizens, and in determining what use shall be made of its own moneys, the State may consult the welfare of its own citizens, and what is a privilege, rather than a right, may be made dependent on citizenship.

Juvenile Delinquent Act—Nature of Restraint. Weber vs. Doust. (Washington, March 9, 1915. 146 P. 623.) The State has the right to the custody of children and detention under a juvenile delinquent act

without a warrant is not a deprivation of liberty without due process of law. Such an act is not punitive in its nature or purpose.

Municipal Corporations—Power to Enact Ordinances Regulating Billboards. Thomas Cusack Co. vs. City of Chicago. (Illinois, April 9, 1915. 108 N.E. 340.) A city has power to enact an ordinance requiring the consent of a majority of the residence owners to the erection of a billboard in a residence block under the statute giving cities the power to regulate the erection of billboards, etc., upon vacant property and buildings. On the question of the reasonableness of such an ordinance it is competent to show that the erection of billboards is productive of fire and that residence districts are not so well protected as business districts; and that billboards offer a protection to disorderly and lawbreaking persons.

Obligation of Contracts. Baltimore & Ohio R. Co. vs. Miller. (Indiana, January 29, 1915. 107 N.E. 545.) A valid contract, if indivisible, may be rendered wholly void by federal legislation subsequently passed. Consequently a provision of a contract between a railroad relief association and an employee which deprives such employee of any benefits in case he attempts to recover for the injuries by suit, being forbidden by the federal employers' liability act, invalidates the entire contract. The court further points out that the contract could not be invalidated by subsequent state legislation as such legislation would be violative of the provision of the federal constitution prohibiting a State from passing any law impairing the obligation of contracts.

Officers—Constitutional Office. Magee vs. Brister. (Mississippi, April 12, 1915. 68 S. 77.) While the legislature may within certain limits prescribe the duties pertaining to an office created by the constitution, it cannot practically abolish the office by preventing its incumbent from discharging those duties which necessarily pertain to it.

Officers—Governmental Functions. Apfelbacher vs. State. (Wisconsin, April 16, 1915. 152 N.W. 144.) A State is not liable for the tortious acts of its officers who are exercising a governmental function. The propagation of fish by the State for the stocking of public streams is a governmental, not a proprietary, function.

Officers—Term of Office. O'Laughlin vs. Carlson. (North Dakota, April 16, 1915. 152 N.W. 675.) In the absence of constitutional

prohibition the legislature may change the term of office even after the election or appointment of the incumbent.

Officers—Manner of Appointment. Ingard vs. Barker. (Idaho, March, 1915. 147 P. 293.) The legislature upon the creation of an office may decree that the appointment of officers to fill such office may be made by the chief executive or by any person, board, corporation or association of individuals and such appointment would not be an improper exercise of power belonging to the executive. In the absence of a constitutional provision to the contrary, any one of the three departments of government may, under the authority of a statutory provision, appoint for any class of office in its department.

Personal Rights—Liberty. Weber vs. Doust. (Washington, March 9, 1915. 146 P. 623.) "Liberty," in so far as it is noticed by the government, is restraint, rather than license. It is a yielding of the individual will to that of the many, subject to such constitutional guarantees or limitations as will preserve those rights and privileges which are admitted of all men to be fundamental. "Liberty" in the civil state is a giving up of natural right in consideration of equal protection and opportunity.

Police Power—One Day's Rest in Seven Law. People vs. Klinck Packing Co. (New York, February 5, 1915. 108 N.E. 278.) A statute providing for one day of rest in seven for all laborers in factories and mercantile establishments is within the police power of the State as being an enactment which really tends to promote and protect the public health without conflicting with individual rights of property and contract. The question of the measure of leisure to be given to such laborers is one for the legislature and is not subject to judicial review when not palpably unreasonable.

Race Discrimination. Queensborough Land Co. vs. Cazeaux. (Louisiana, January 25, 1915. 67 S. 641.) A condition in a deed, for the benefit of the grantor and its other grantees, that the grantee shall not sell to a negro, does not violate the fourteenth amendment to the United States Constitution; since, so far as prohibiting discrimination against the negro race, it applies only to state legislation, and not to contracts of individuals.

Religious Liberty—Bible in Public Schools. Herold vs. Parish Board of School Directors. (Louisiana, March 22, 1915. 68 S. 116.) The reading of the Bible, including both the Old and New Testaments, and the offering of the Lord's Prayer in the public schools, are discriminations in favor of Christians and against Jews and violate the provision of the constitution guaranteeing religious liberty.

Statutes—Sufficiency of Title. Thrift vs. Laird. (Maryland, January 14, 1915. 93 A. 449.) The purpose of a constitutional provision providing that every law shall embrace but one subject, which shall be described in its title, is to prevent the enactment of laws surreptitiously, and to give all interested an opportunity to be heard on the advisability of the proposed legislation, and to advise members of the legislature of the character thereof. While such a provision requires that the title indicate the subject, the title need not give an abstract, nor need it mention the means and methods by which the general purpose is to be accomplished.

Statutes. Sufficiency of Title. Locke vs. Ionia Circuit Judge. (Michigan, March 17, 1915. 151 N.W. 623.) The title of the act of 1899 which read "An act to provide for the examination, regulation and licensing of physicians and surgeons," while sufficiently broad to include the practice of medicine, is not broad enough to cover an amendment passed in 1913 which provides for licensing persons desiring to practice a system of treatment of human ailments without resort to drugs, medicine or surgery.

Workmen's Compensation Acts. Smith vs. Industrial Accident Commission. (California, February 16, 1915. 147 P. 600.) The federal employers' liability act is exclusive of state legislation, and an employee engaged in interstate commerce cannot recover for an injury received in his employment under a state workmen's compensation act.

JOHN T. FITZPATRICK.

Law Librarian,
New York State Library.

BOOK REVIEWS

Limitations on the Treaty-Making Power Under the Constitution of the United States. By HENRY ST. GEORGE TUCKER. (Boston: Little, Brown and Company. 1915. Pp. xxi, 444.)

Recent conflicts, either actual or possible, between the treaty-making power of the United States and the reserved rights of the States, have given rise to a considerable body of literature. Most of this has been concerned with the nature and extent of the treaty-power and has assigned to it a very broad scope; the opinion accepted by the authority as well as by the majority of the writers is that the reserved powers of the States do not operate as a curtailment. With a method and result contrary to these authors, Mr. Tucker has written an able, and since that of Butler the most elaborate work on the treaty-making power. He is concerned, however, not with ascertaining its nature and extent, but with setting limits to its exercise. A treaty, he concludes, may not abridge any individual rights guaranteed by the Constitution; it may not bind the United States to do what is forbidden by the Constitution; it may not "oust Congress of its exclusive constitutional grant of the power to legislate" on the enumerated subjects; it may not change the form of government of the United States; it may not confer greater rights on foreigners than are accorded citizens under the Constitution, and, finally, when the "control or protection of [personal and property] rights is, under the Constitution, confided to any department of the government or to a State, such department or State, as the constitutional repository of such rights cannot be ousted of their (*sic*) jurisdiction by having the same transferred to the treaty-making power."

In asserting several of these limitations Mr. Tucker merely follows the accepted opinion. His statement as to the power of the House of Representatives is probably too broad, but the chapter in which he discusses the subject is excellent, and as an addendum he prints the well known report on the Hawaiian Treaty made to the House of Representatives by his distinguished father (J. Randolph Tucker) in 1887. There is also a valuable analysis of the diplomatic correspondence relating to treaty obligations to foreigners. "It would seem," Mr.

Tucker says, "that there could be no doubt of the power of Congress to enforce by appropriate legislation the constitutional treaties entered into by the United States with foreign countries," e.g., by making offences against treaty rights cognizable in the federal courts. To the reviewer, however, the constitutional question does not admit of such a categorical answer; at least some mention should have been made of authority to the contrary, such as the valuable report to the American Bar Association in 1892 which is severely criticized by Professor Taft in his recent volume, *The United States and Peace*. But in any event, Mr. Tucker's opinion on this point seems inconsistent with his belief "that no essential power of a State, whether a reserved power or a police power, can by reasonable construction be constitutionally taken from it, in furtherance of the treaty-making power." This is the most important as well as the most questionable conclusion of the book; it is opposed by all recent writers, such as Willoughby, Corwin, Butler, Burr and Delvin.

To maintain his view Mr. Tucker first marshals the opinions of many authors and statesmen, who are considered to furnish supporting authority. But, read without a desire to twist the meaning, these excerpts are of slight importance. Story's opinion, for example, was that "the peace of the nation, and its good faith, and moral dignity, indispensably require that all State laws should be subjected to their [treaties'] supremacy." This passage (*Commentaries*, Sec. 1838) is not quoted by Mr. Tucker, but a more equivocal one is. Even this, if read fairly furnishes no support for his position. Story was followed by Cooley, who in turn is cited by J. Randolph Tucker in his work on the Constitution, and so none of these three can be said to maintain the supremacy of a State law. Similarly, nearly all of the writers quoted by the author of the volume under review can be shown either to be silent on this particular question, or to anticipate the prevailing view as to the extent of the treaty-making power. Such an interpretation has been convincingly made by Professor Corwin in his *National Supremacy*. After quoting "authors and statesmen" Mr. Tucker proceeds with an examination of the opinions of judges which calls for the same criticism. Here are set out the *dicta* which Willoughby thinks "will sooner or later be frankly repudiated by the Supreme Court."

Mr. Tucker then considers the treaty-making power under the articles of confederation and the grant in the Constitution. He devotes some space to an analysis, and a partially effective refutation, of the broad claims made by Butler on the ground that the treaty-making

power is inherent in sovereignty—a view not held by Corwin, Willoughby, and others. Then Mr. Tucker summarily disposes of the line of early cases decided by the Supreme Court (such as *Chirac* v. *Chirac*, *Hauenstein* v. *Lynham*, *Geofroy* v. *Riggs*, etc.) and which are counter to the view he is maintaining. These cases, according to the author, simply held that the treaty-making power may remove the badge of alienage from foreigners, and thus take them out from the operation of State discriminatory laws regarding descent and inheritance. In these cases, Mr. Tucker concludes, there was no annulment of local regulations. All the opinions in *Ware* v. *Hylton* are given an exhaustive analysis, and the unusual view advanced that the case did not declare the Virginia law to be invalidated by the Treaty of Peace of 1783. The argument is too complex to be summarized here; suffice it to say that Mr. Tucker's interpretation of these cases is altogether novel. Commentators and courts have, almost without exception, considered the cases as authority that the treaty-making power may infringe the rights of a State. (An excellent, although not so exhaustive, analysis of *Ware* v. *Hylton*, stating the common deduction from the case, is given by Burr, *The Treaty-Making Power*, pp. 339–345.)

With this disposition of precedent contrary to his thesis, Mr. Tucker is ready to consider the nature of the police power and its relation to the treaty-making authority. He recognizes that there is a line of cases, beginning with *Gibbons* v. *Ogden* and now constantly added to, making the police power subject to Congressional regulations under the commerce clause. This, however, furnishes no ground for a similar view with regard to the treaty-making authority. The grant of the power to conclude treaties is *general;* the powers reserved to the States are *specific.* In the construction of deeds and wills, a *general* grant is limited by a *specific* grant; the same is true in the American constitutional system. It hardly needs to be said that such reasoning is not conclusive.

In a book such as this, which makes novel deductions from familiar precedents, it is not unreasonable to expect at least a mention of the more important opposing authorities. But there is no reference to Corwin's *National Supremacy* or to Burr's *The Treaty-Making Power.* Butler's opinions are adequately treated, probably because they are extreme and in some respects more easily controverted. Willoughby is criticized because he attaches no importance to *Compagnie Française* v. *Board of Health*, in which the court held valid a State quarantine law, on the ground that there was no conflict between it and the treaty in question.

The opinion does not contain the slightest implication that if there had been a conflict, the State law would have prevailed. One can with difficulty resist the conclusion that Mr. Tucker's reasoning from this and the earlier cases is as follows: when the treaty is enforced, the State law is not struck down; when, however, the State law is enforced (although there is no question as to supremacy), the court would, if necessary, have struck down the treaty. The most conspicuous illustration of this tendency to twist authority is in the chapter on the Japanese-California Controversies. Mr. Tucker coolly cites President Wilson and Secretary Bryan in support of his view that the California land tenure law was supreme as against the treaty, when, from the diplomatic correspondence quoted, such a conclusion does not appear remotely valid.

This necessarily brief summary will serve to show the general character of Mr. Tucker's arguments. His work is painstaking, scholarly, and clearly and simply written. The conclusion is inevitable, however, that the book is a piece of special pleading rather than a scientific treatise.

LINDSAY ROGERS.

Austria-Hungary and the War. By ERNEST LUDWIG, with an introduction by Dr. Constantin Theodor Dumba. (New York: J. S. Ogilvie. 1915. Pp. 217, with two appendices.)

A voluminous literature has arisen already concerning the present European war and its causes. Unfortunately much of it has been done too hastily, with little regard for the historical, political and economic background and without a serious attempt at genuine historical research among official or authentic sources. And far too large a proportion of it has been penned to defend the position or action of this or that belligerent. It takes a skillful reader these days to pick out what is really "worth while," for the number of books and articles now being written on this war, which will survive the test of time and investigation, is not likely to be large.

In writing *Austria-Hungary and the War*, Herr Ludwig was fulfilling a patriotic duty. He is the imperial and royal consul of Austria-Hungary in Cleveland, Ohio; and, his magazine articles on this subject being returned unused by American editors, he prepared this work because "we would like to convince the American public that this war is not of our making." The publishers announce that the "book contains a comprehensive presentation of the political forces and his-

torical developments which led to the initial clash of arms," and the title hints at something of the same character. But both statements are misleading. The author writes: "I have no intention to argue here on the question who started this war. Developments in this war-drama have not yet reached the stage where anybody could have in an unbiased way collected all evidence referring to this point." And he says nothing on the vital question of the relation of the Servian conflict at the outbreak of the European war. His evident intention is to utilize the information at his disposal in proving two things: that the note to Servia was not brutal and that Servia was responsible for the Sarajeve murders and the Austro-Servian war. He has given us an interesting and well-written account of the Austrian case against Servia; but his methods are curious.

He discusses the Servian note controversy before taking up the Sarajeve trial, and the historical claims of Servia to Bosnia after finishing the chapter on the trial. His opening chapter is mainly composed of interesting impressions gathered during his homeward journey through Germany and Austria at the opening of the war; while the final chapter on "Economic war conditions in Austria-Hungary" has little to do with the real purpose of his work. And, out of the 198 pages of the text, only 85 are devoted to the Austro-Servian crisis: the theme which justifies the volume. With the exception of the German *White Book* and the records of the Sarajeve trial, from which last, however, he makes no direct quotations, Herr Ludwig bases his study entirely on secondary sources, newspapers and information received from influential friends. Unfortunately he seems not to have had access either to the Austrian or Servian official documents and correspondence.

The author evidently tries to be fair and tells a straight-forward story; but he errs in believing that the world will free Austria from all blame in the matter on his simple demonstration, based on somewhat doubtful and altogether untested evidence, that Servia was planning deliberately to disrupt the Austro-Hungarian monarchy. No discussion of this question can be convincing that ignores the three fundamental factors on which any intelligent study of this controversy must rest: the southern Slav problem, the economic competition in the Balkans and the Austro-Russian competition in southeastern Europe. Herr Ludwig says something about Ruthenians and Poles, but nowhere do we find a discussion of the Croat-Serbs, their struggles for local autonomy and their relations to the other Serb peoples of the Balkans. Neither is there an account of the long economic conflict

between Austria and Servia, which became a matter of life or death to the Servian nation; or mention of the bitter press campaigns in both countries, that aroused suspicion, anger and revenge on both sides. No hint is given that it was quite as possible for the Servians to believe that Austria was planning to destroy their state, as it was for Austrians to suspect Servia of plotting to disrupt the Austro-Hungarian monarchy. The author has a chapter on "The Great Russian Propaganda in Galicia Bukovina and the Northwest District of Hungary before the War," but he enters upon no intelligent study of the Russo-Austrian economic and commercial competition in the Balkans.

Another weakness in his argument lies in the failure to discriminate between the acts of religious and other societies, and of individuals, and those of the government. Accusations against rulers and men at the head of governments are easy of inference, but most difficult to prove. That the Russian government should be held responsible for the activities of the "Slavic Benevolent Society," of the Russian clericals and of Count Wladimir Bobrinski or other Pan-Russians, does not necessarily follow, any more than that the German government should be held accountable for all the deeds and propaganda of the Pan-Germans. Nor is the evidence that certain members of the Narodna Odbrana, a Servian secret society, are shown to have organized the attempt on the life of the Archduke, sufficient proof that the Servian government and nation were behind the movement.

And Herr Ludwig has evidently not a high estimate of the intelligence of his readers, for he tells them what to think on each point at issue and puts in italics every sentence that seems important to him. He expects to convince the world of the intrinsic wickedness and corruption of the Servian nation by printing a list of sixteen murders of royal or public characters, committed in that country between the tenth and the twentieth centuries, of which, however, only three have occurred since the sixteenth century. It is not improbable but that, with an equal display of industry, one could compile a similar list of political or dynastic crimes perpetrated in the neighboring kingdoms of Russia, Turkey and Austria during the same period. Even in the most recent times these greater nations have not been entirely free from crimes of a political nature.

The chapter on the "Sarajeve Trial" contains a good deal of interesting information new to American readers and would have been the author's most valuable contribution but for his inability to sift the

evidence with clearness and discrimination. He accepts the unconfirmed testimony of criminals and witnesses and the statements of the prosecuting attorney without question. He shows that all the young men under trial for the royal murders were under age, and that all the witnesses on the origin of the crime were students, minor officials, persons of little reputation or importance and Austrian police spies. The existence of war between Austria and Servia prevented the bringing in of any reliable Servian witnesses, or of any important personages intimately acquainted with the work of the "Narodna Odbrana" —the secret society chiefly implicated in the conspiracy against the Archduke Franz Ferdinand. On the testimony of such witnesses and without waiting for the test of a higher court where the Servians might have an opportunity of entering a defense, the author is prepared to accept the pronouncement of the prosecuting attorney that "Servian state ministers, high officers of the army and the Servian Crown Prince himself had had personal and frequent intercourse with the hired murderers of the Austro-Hungarian Crown Prince," that Servia was the instigator of the murder," and that Servia "had been instigated by another higher up, by the despotic Empire of the Czar." But no valuable evidence is produced in the author's account of the trial to prove the complicity of Russia, of the Servian government or of its ministers of state. The only thing that can be said to have been established, as a result of the deliberations on this case, is that the plot probably originated with certain members of the "Narodna Odbrana" and some officers in the Servian army. The young boys who committed the dastardly attack on the Archduke and his wife, were their tools acting under the excitement of national hatred, conspiracy and a misguided spirit of patriotism. The condemnation of the Servian Crown Prince is based on the statement of one of the youthful criminals that he was received in audience by the Crown Prince when in Belgrade a month before the assassination, and on the testimony of an unnamed witness who claimed that the Crown Prince had received two students from Croatia during a student convention at Belgrade in 1912, one of whom—Luca Jukic—made an attempt later to take the life of Baron Skerlecz Ban of Croatia. All travelers to Servia and Montenegro know how easy it is to secure an audience with members of the royal families of those countries. And it is not beyond the bounds of probability, that a prominent member of the "Narodna Obdrana" might have introduced the young revolutionist to the Prince in order to impress the student with the importance of his task, without the Prince in any

way being cognizant of the contemplated plot. Prosecuting attorneys may point the finger of accusation at the Servian royal family on such unsupported evidence, but it is far from probable that any court of law would pass sentence on the Crown Prince without further evidence from more credible and important witnesses concerning the nature of the interviews and the connection of the Prince and the government with the "Narodna Odbrana" and the Servian conspirators named in the notes of the trial.

This volume proves again the futility of the numerous attempts to explain: "Why England is at war," "Germany's case," or "Austria's position" without the proper background of historic knowledge and a serious attempt at modern research. What Americans want—what all fair-minded persons desire—is not a hasty and untested statement of Austria's case or a polemic in defense of Servia, but a thorough, impartial and scientific study, based as far as possible on official sources and documents, of the whole complicated situation and the events leading up to the murder of the Archduke. As such a work cannot be performed successfully until some time after the war is over, it will be better to withhold final judgment in the Austro-Servian controversy for the present.

N. Dwight Harris.

Les Finances de Guerre de L'Angleterre. By Gaston Jèze, Professeur-adjoint a la Faculté de Droit de L'Université de Paris. (Paris: Giard et Brière. 1915. Pp. 248.)

One of the results of the European war has been an extraordinary output of new publications dealing with almost every conceivable question to which the great conflict has given rise. Most of them so far have been of a rather popular character and for the most part polemic. The present study by an acknowledged master in the field of public finance is a notable exception in this respect. It is neither controversial nor popular in character, but is a serious study of English war finance and it bears the evidences of careful research and learning which characterize the numerous publications which its distinguished author has brought out in recent years. While the present study is not a general treatise on war finance, it is by no means without observations on what is and what is not sound financial policy in time of war. And although primarily a study of present English war finance, it is not wholly so; as a suitable background for the present study the

author has compared the financial policies and expedients of the British government during various previous wars with those adopted since the outbreak of the present conflict.

M. Jèze bestows high praise on the British government in general and on the chancellor of the exchequer, in particular, for the wisdom which they have shown in the measures adopted for obtaining the huge sums necessary for carrying on a war of such tremendous magnitude as that now in progress. The decision of the government not to resort to the expedient of issuing paper money and not to rely wholly upon loans, but to employ as far as possible the power of taxation and thus compel the present generation to bear a large portion of the burden, he commends as one of obvious justice and wisdom.

On August 8, 1914, Parliament voted a credit of $500,000,000, which was followed by another vote in November of $1,125,000,000. These votes were remarkable, says M. Jèze, for two reasons; first, because of the amount—it was the largest war appropriation ever made; second, because it was granted to the government in a lump sum and without specification as to the purposes for which it was to be used. In previous wars it had been the custom of Parliament in voting war appropriations to limit their use exclusively to cover expenditures of military and naval operations in the strictest sense of the word. The votes of 1914, on the contrary, authorized the government to use the sums granted for all expenses resulting from a state of war, *i.e.*, for the cost of all measures which might be adopted by it for the defense of the country. Thus for the first time the House of Commons surrendered, to a large degree, its power of control and gave the government *carte blanche* to proceed as its judgment dictated. This M. Jèze thinks, was a wise decision and the fact that the November appropriation was voted four months after the beginning of the war without a word of protest by any member of the opposition shows that the confidence in the government was complete.

The enormous sums thus voted were raised in two ways: by increased taxes and by a loan. The rates on incomes and the surtax were doubled, the excise tax on beer was increased and so was the duty on tea. The succession tax and the tax on alcohol were untouched as they had already been raised several years ago, nor were the taxes on wines and sugar—wines for reasons of public policy (the chief sources being France and Portugal), sugar because the war had limited the English supply (much of which had come from Germany and Austria). It was estimated that the increased rates on incomes, beer, and tea would

bring in about $300,000,000 a year. The remainder ($1,750,000,000) was raised by a loan. There was some anxiety at first as to the probable success of a loan of such huge dimensions, but on November 27, ten days after it was opened, the chancellor of the exchequer was able to announce that it had all been subscribed. It was, he said, the largest ever made in the history of the world for any purpose and the promptness with which it was taken could be regarded as a justification of the measures which the government had adopted.

JAMES W. GARNER.

A History of French Public Law. By JEAN BRISSAUD. Translated by James W. Garner. (Boston: Little, Brown and Company. 1915. Pp. lviii + 581.)

This work forms Volume IX of the Continental Legal History Series published under the auspices of the Association of American Law Schools. The *History of French Private Law* by the same author has already been translated, so that the English-speaking public is now in possession of the complete treatise of Brissaud on the institutions of his country.

After an editorial preface by Professor Freund and two extended introductions by Professor Hazeltine and Professor Willoughby, the reader will not fail to appreciate in advance the importance of this contribution to political science, consequently the reputation of the author as an investigator of legal history need not be reëstablished in this brief review. Suffice it to say that we have to do with a work of recognized distinction since the date of its original publication in 1904. Coming after a series of investigators equally prominent in their day, Brissaud presents the accumulated results of the long scientific inquiry of others as well as himself.

The period covered extends from the Roman conquest of Gaul to the French Revolution, with the usual divisions into the Frankish epoch, the feudal period, and the period of monarchy. No reclassification of these phenomena can well be made at present, but the author has done well to treat the constitutional history of the church in one continued story through the whole period. This permits the student to gain perspective for the detailed work of Luchaire and others on the early monarchy. In the ordinary teaching of mediaeval history not enough attention is given to the church as a great fiscal institution, but the combined array of text and references in this work

will make that task easier. The topical method does not apply quite as well to this history of legislation or administration, but the transitions from one period to another are suitably indicated.

The volume may be described as a great arsenal of established facts fortified behind an enormous amount of literature. The textbook plan of short sections and frequent subheads does not contribute to the ease of reading, but as a work of reference, both for compact statements and for citations from the authors and sources, this volume is a treasure. The notes occupy more than one-third of the space and consist chiefly of solid authorities rather than discussions left over from the text. The labors of the translator in this part of the work must have been exacting, hence one is disinclined to comment that the constant use of the numerals instead of the century, as "in the 1700's," is a convenient mode of speech, but one which has hardly become naturalized in English print. Teachers of European history and institutions have been laid under obligation by all concerned in the publication of this series.

J. M. VINCENT.

War: Its Conduct and Legal Results. By T. BATY AND J. H. MORGAN. (New York: E. P. Dutton and Company. 1915. Pp. xxviii, 578.)

Manual of Emergency Legislation . . . Passed and Made in Consequence of the War. Edited by ALEXANDER PULLING. (London: H. M. Stationery Office. 1914. Pp. xi. 572.)

Until the publication of this work of joint authorship there was no adequate consideration of the full effect of war on the laws of England. Volumes on war in international law were, of course, legion, and the outbreak of the present conflict brought forth a flood of books concerned with the effect of the war on commercial transactions. But in the present volume, with a consistent division of subject matter, Dr. Baty reconsiders the effect of the war on private law, as well, if not better than has been done by anyone else, and Professor Morgan has written an admirable treatise on a hitherto untouched subject—war measures and the English constitution. Chief interest will probably attach to this portion of the volume.

Professor Morgan deals first with the relations between the Crown and the subject. "Whether a state of war exists within British terri-

tory," he declares, "is always a matter for judicial determination, and a mere proclamation to that effect has no authority." The military authorities must in every instance justify superseding the civil power in order to meet what they consider to be an emergency. Professor Morgan inclines to favor the old test (which he does not think discarded in English law by the *Marais* case), that the fact of the courts being able to sit is conclusive evidence that a state of war does not exist—a doctrine accepted by the supreme court of the United States in *Ex parte Milligan.*

After a clear outline of already existing laws designed to secure the defence of the realm, and the powers of the Crown at common law and under statute as to such subjects as treason, sedition, espionage, control of railways, aerial navigation, customs, requisitions, and the like, Professor Morgan takes up the new emergency legislation. Under authority from Parliament regulations have been made by order in council for temporarily limiting the sale of intoxicating liquor; for forbidding the exportation of commodities; for taking possession of any foodstuffs, compensation to be determined by arbitration; for the restriction of aliens, and for many other purposes. But the Englishman is chiefly affected by the defence of the realm act which gave his Majesty the authority, during the continuance of the war, "to issue regulations for securing the public safety and defence of the nation." These regulations meticulously forbid any act which may inure to the advantage of the enemy or hamper England in the conduct of the war. The naval and military authorities are given broad powers to take measures for defence regardless of personal or property rights. Provision was made for trial by court martial, the offender to be proceeded against as if he were a person subject to military law and had on active service committed an offence under section 5 of the army act—and this despite the fact, as Viscount Bryce declared, that the British subject is entitled, "as he always has been in times past, to have the constitutional protection of being tried by a civil court when there is a civil court there to try him."

Professor Morgan makes a careful examination of the language of the enabling acts and comes to the conclusion that in many instances the regulations are clearly in excess of the powers conferred by Parliament. Several of these objections have been obviated by the defence of the realm consolidation act, but this did not restore jealously revered constitutional safeguards or make more secure the liberty of the press. The civil courts could by writ of prohibition, in Professor Morgan's

opinion, restrain the courts martial from trying civilians for breaches of regulations that are *ultra vires*, or a writ of certiorari would issue. But in other cases the conviction would be subject to review only by the judge-advocate-general. The defence of the realm act, Professor Morgan declares, "silences the courts. It is more specious but far less restricted than martial law. Certainly never in our history has the executive assumed such arbitrary power over the life, liberty, and property of British subjects."[1]

The remaining sections contributed by Professor Morgan deal with the armed forces of the Crown, military law and courts martial, the laws of war on land, annexation and acts of state and the Crown and its treaty obligations. This last chapter is an especially able treatment of the neutrality of Belgium. Dr. Baty's portions of the volume consider the laws of war at sea, alien enemies and contracts with them, trading with the enemy, and the person and property of enemies. Part V on "The Crown and the Neutral" takes up the prize court procedure, contraband, blockade, and unneutral service. Miscellaneous chapters deal with the commencement and end of war; the Moratorium, and *force majeure*.

In their preface the authors express willingness to accept "a joint and several liability for the whole of the book." In spite of the haste necessary in its preparation, however, the work is scholarly, authoritative and in many respects brilliant. Dr. Baty's conclusions concerning the status of alien enemies as litigants do not seem in all cases correct; but he did not have access to some recent decisions. A footnote missing on page 376 would probably state that M. Renault's Memorandum on the Declaration of London is, by the order in council of October 29, no longer to be regarded as an aid in construing the Declaration.

[1] It should be added that since Professor Morgan wrote these words Parliament has passed a defence of the realm amendment act (No. 1, March 16), which gives a British citizen the right to demand a jury trial. But this safeguard may be abrogated by royal proclamation in the event of "invasion or other special military emergency arising out of the present war." Offending neutrals are still punished under military law, although such cases may be transferred to a civil court at the discretion of the prosecuting officer. The first prosecution of a newspaper for the publication of a report "likely to cause disaffection" (the London *Times*, May 31), did not, therefore, take place before a court martial. This denial of a jury trial from the outbreak of the war until the amendment, called forth very few objections in the press. (See *Law Magazine and Review*, February, 1915, and *Candid Quarterly*, February, 1915.) Subsequent amendments to the defence of the realm act, as is well known, give the executive broad powers regarding munitions of war.

A number of the laws and orders in council considered by the authors are set out in appendices to their volume. All are given in the *Manual of Emergency Legislation*, which, although only covering the period up to October, makes a sizable book. Supplements are now issued at intervals, and Mr. Pulling has prepared a careful check list of the great variety of subjects considered. The regulations furnish an excellent index of the abnormality of war and the dislocation that it causes in many fields. The method of enactment, by the executive under broad grants of power from Parliament, is a marked departure from the Anglo-Saxon ideal, generally asserted but not always conveniently adhered to, that the legislature should act as definitively as possible, particularly in criminal matters. As Professor Morgan says of the defence of the realm regulations, "they are the most remarkable example of delegated legislation that this country has yet witnessed."

LINDSAY ROGERS.

Les Principes Généraux du Droit Administratif. Deuxième édition. By GASTON JÈZE. (Paris: Giard et Brière. 1914. Pp. xlvii, 542.)

The first edition of this work appeared in 1904. The present edition is largely a new treatise, its size having grown from a volume of 167 pages to one of 542 pages. It differs from the conventional treatise on the French *Droit Administratif* in that it does not deal with the constitution of the administrative system or with the general principles of administrative organization. A knowledge of these matters is assumed by the author. It contains no description of any organ, court or institution of the state, department or commune. It is mainly a study of the juridical principles which dominate the institutions of French administrative law and is based largely on the decisions of the court of cassation, the council of state and the tribunal of conflicts. It contains copious footnotes and citations of cases in which the texts of essential passages are quoted in illustration of the principles discussed. The work bears the usual evidences of wide research and learning which characterize the numerous writings of the distinguished author and altogether it is one of the most substantial contributions to the literature of French administrative law that has been made. All students of the subject will welcome the announcement of the author that "more volumes are to follow."

Three great ideas, we are told, dominated French administrative law

at the end of the nineteenth century: (1) the distinction between acts of authority and acts of management (*actes de gestion*); (2) the irresponsibility of the state when acting in its sovereign capacity or performing acts of public power and (3) the independence of the administration as over against not only the judicial courts but even the administrative courts. The first and third of these principles, which were mainly the result of historical and political conditions prevailing at the end of the eighteenth and at the beginning of the nineteenth centuries were at the beginning of the present century, the author says, in absolute contradiction with existing political economic and social conditions and it is to the honor of the council of state that it realized this fact and repudiated those dogmas. The theory of the distinction between acts of authority and acts of management has virtually been abandoned and the dogma of the irresponsibility of the state is in its last convulsions. The third principle: the independence of the administration of judicial control, is now in process of demolition at the hands of the council of state. This "secular superstition," M. Jèze maintains, entirely explicable under the monarchical and imperial systems, is too much out of harmony with the democratic regime of the reign of law to last very much longer and he shows how by its decisions the council of state is fast throwing it overboard.

Starting out with some brief observations on the nature of French administrative law in general, in the course of which he refers to the well known strictures of Dicey whose early misunderstanding and prejudice M. Jèze has done much to remove (see Dicey's preface to the last edition of his *Law of the Constitution*), the author passes to a consideration of what he calls "juridical technique:" its general notions, juridical powers, acts and situations, the force of the *chose jugée*, judicial control of legislative and administrative acts, etc. In books II and III he considers at length the notion of the public service, which he characterizes as the corner stone of French administrative law and the new conception of which has brought about the remodeling of all the institutions of the administrative law. Special attention is given to a consideration of the juridical nature of the public service, the legal character of the official relation, the legal distinction between the various categories of public officers and employees, the problem of the functionaries, with some observations on their excessive number and the need of reduction, etc. Much of the discussion of these matters is highly technical and therefore of no special interest to American students. His treatment of the subject of judicial control of legislative and administrative acts (Chap.

VIII) is probably the most interesting part of his treatise, at least to Americans. As a starting point for a discussion of this subject M. Jèze lays down the proposition that a good political and administrative organization must be subject to judicial control—that is, the individual must be allowed judicial recourse for excess of power against every act of the governing authorities whether they be legislators or executive agents.

Political control through responsible ministers is no longer regarded as sufficient. Among other reasons, it is too unwieldy; a vote of censure by parliament may be ineffective and the overthrow of a ministry is likely to be so far out of proportion to the fault that the dominant party cannot be expected to resort to so heroic a remedy. Judicial control alone can compel respect for the law and safeguard the rights of the individual. Important progress has been made in France toward the establishment of this form of control and the signs indicate a still further advance in the near future. As regards legislative acts, properly speaking, however, the right of judicial control is not yet admitted, at least not by the courts. No tribunal will presume to question the constitutionality of any act of parliament provided it has been enacted in accordance with the mode of procedure prescribed by the constitution and duly promulgated by the president. The principle of the separation of powers proclaimed at the time of the revolution still subsists, notwithstanding the fact that the particular conditions which led to its introduction have long since disappeared. The reason which moved the revolutionists to deprive the courts of their control over legislation was the memory of the opposition of the old *parlements* to the legislative reforms of Colbert, Necker, and Malesherbes and the fear that the judges of 1790 were out of sympathy with the ideas of the revolution.

To insure the success of the revolution it was therefore deemed necessary to free the legislature from every form of judicial interference. But today the republic is safely established and the French judges are fully imbued with Republican ideas. The old danger from the judiciary, therefore, no longer exists and it should be made the guardian of the constitution. The argument that a law passed by parliament is an act of sovereignty and cannot therefore be subjected to judicial control M. Jèze successfully riddles. There is nothing in the juridical nature of an act of parliament which differentiates it from an executive ordinance (*règlement*). Yet the latter are subject to judicial control and are in practice frequently nullified by the courts. The fact that they have a different authorship does not make them materially or intrinsically

different from legislative acts. Moreover, the court of cassation claims and exercises the right to disregard an act of parliament which is *formally* invalid, i.e., one which has not been passed by both chambers by the required majority at a common session and which has not been properly promulgated by the president of the republic. This distinction is not sound in logic as M. Jèze points out. If the courts may properly hold the legislature to the observance of constitutional provisions relating to the formalities of legislation it is difficult to see why they may not with equal propriety compel the legislature to respect constitutional prescriptions relating to the material content of legislation.

As yet the courts have not admitted the right of recourse in annulation for excess power against decree—laws issued by the president in pursuance of a delegation by parliament for the government of the colonies but this doctrine, M. Jèze says, appears to be undergoing change. The president, he argues, is merely an administrative agent even when he exercises by delegation the power of legislation for the colonies and decrees of this kind like other executive *règlements* should be subject to judicial control.

As has been said, the courts freely exercise the power of control over executive *règlements,* but until 1845 the council of state did not allow it in the case of *règlements* issued by the chief of state. This was explained by the political position of the king or emperor. He was a *governant* not a mere administrative agent and his acts being political rather than administrative in character were not subject to judicial control, but with the advent of the July monarchy and the change in the political position of the king the courts adopted a different view and since 1845 the council of state has freely admitted the right of recourse in annulation of his acts for excess of power.

Until 1907, however, a distinction was made between simple executive *règlements* and *règlements* of public administration, that is, ordinances issued by the president upon the advice of the council of state and upon invitation of the legislature. The former were subject to judicial control; the latter being assimilated to the condition of an act of parliament were not subject to recourse for excess of power. But step by step the council of state modified its views and in 1907 it definitely decided in favor of the right of recourse and this opinion has been many times since reaffirmed.

The council of state still refuses, however, to admit the right of recourse in annulation against certain political acts of the president, known

as "acts of government." It has always maintained that there is a distinction between simple administrative acts and important measures of a high political character which the government is obliged to resort to in time of war or grave emergency. The latter cannot be subjected to judicial control. But the council of state has greatly narrowed the old theory of *actes de gouvernment* which was once so much abused, and now the number of such acts recognized by the council of state is very small. One by one they have been brought under the control of the judiciary until at present the only acts of this kind which are still free from judicial control are those relating to a state of siege and certain acts in connection with the administration of foreign affairs, and even the power of the government in respect to these matters is much limited.

The evolution of French jurisprudence in the direction of a more complete judicial control over the acts of the government has been very gratifying to the French people and the liberal attitude of the council of state, in particular, has done much to increase the popular confidence in that tribunal and to give it a place in the public esteem, which no other court or institution in France enjoys.

JAMES W. GARNER.

The Philosophy of Law. By JOSEF KOHLER. (Boston: The Boston Book Company. 1914. Pp. xliv, 390.)

What one finds in this book is, we believe, the sort of tonic that American legal thought needs. The prevailing philosophy of law in this country—for the lawyer has a philosophy, even though he be unconscious of its possession—is the eighteenth century conception of the existing legal system as something applicable to all peoples and to all conditions, something unchanging and unchangeable. Kohler, whatever be his merits or defects as a legal philosopher, is at least the implacable foe of any such notion of the nature of law, and he assaults this theory with true Teutonic vigor. Unquestionably the greatest living jurist in Germany, he is best known as a master in the field of comparative jurisprudence. This point of view leads him in the present work to emphasize the ceaseless struggle in law, the conflict between logical and illogical elements, between ideas of individual right on the one side and ideas of the social mission of law on the other. It may be that this philosophy does not, as Berolzheimer protests, contain a principle fruitful in positive application, but, upon the critical side, it is most useful.

Though Kohler classes himself as a Hegelian, he is not a Neo-Hegelian of the Feuerbach variety who said, *Der Mensch ist was er iszt.* "The notion that human culture is controlled solely by the instinctive desire for food and sexual life is one of the monstrous errors of a bygone dilettanteism." Though he adopts the results of the sociological school, he goes far beyond many of that school in his insistance upon the ethical element in legal institutions. Take, for example, his criticism of the deterministic theory of criminal justice. He points out that there is possible no true justice where man is regarded simply as the product of natural forces beyond his control. Law must view him as a responsible moral agent, and punishment, to be justified, must rest upon the idea of retribution. As a practical matter, the pure element of retribution should be separated, in the minds of the culprit and of the public, from the elements which seek the reformation of the offender of his segregation from society.

Every page of the present work sparkles with expressions characteristic of the brilliancy of its marvelous author. The man is a veritable Leibnitz of the twentieth century, with more than half a thousand writings to his credit twelve years ago, on themes ranging from Aztec law, patents and bankruptcy to aesthetic essays, lyric poems and sonatas. His very appearance is that of the man of genius, forcibly suggesting Liszt.

What a flood of light on the nature and purposes of the law of contract is cast by Kohler's chapter on the law of obligations! He points out how "without affecting individual activity too greatly," the law of contract enables men to act collectively and prevents wealth becoming immobile and unfriendly to culture. Moreover, "obligatory relations bring the future to the aid of the present." They relieve development from the hazards of time, "the step-mother of humanity." Compare for example, the interest-paying countries of western Europe with the unusurious Orient. "The Orient does not concern itself with chance." The law of contract is the basis of free labor as opposed to slavery. It is a powerful support to ethics—it cultivates in man the spirit of faithfulness to his word, and works against arbitrary desire. The various developments of contracts, the pledge, the suretyship, joint liability, are treated in similar fashion. Philosophy and practical suggestions are interwoven throughout the whole discussion.

The author's views concerning the nature of international law are of interest to American readers at the present time. To him, international law is not true law; it lacks the sanction of the state which has not, as

yet, transcended national boundaries. Until "the powerful means necessary to enforce super-national law" are established, it is "an unconditional necessity to acknowledge the achievements of international strife. If this were not done. . . . what exists could never be replaced with something else that would fulfill the demands of culture, and thus we should be plunged into the miserable conditions of anarchy and statelessness. Hence, the principle must be maintained that as long as super-national law does not advance beyond national law, the achievements of war become law, and must be acknowledged as such." Here is the crucial test for a philosophy that looks upon the end of law as the means for opening to the man of genius a field for the development of his personality, rather than as the means for allowing the personality of the average man to have its freest growth.

ORRIN K. MCMURRAY.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY
Library of Congress.

UNITED STATES

Conduct of the Excise Board of the District of Columbia. Report of the special committee of the United States Senate pursuant to S. Res. 522 . . . 1915. 450 p. 8°. Sen. Doc. 981. *Senate.*

Diplomatic Correspondence with Belligerent Governments relating to neutral rights and commerce. 1915. 88 p. fol. *Department of State.*

Estimated Valuation of National Wealth, 1850-1912. 1915. 20 p. 4°. *Department of Commerce, Bureau of the Census.*

Foreign Relations of the United States with the Annual Message of the President transmitted to Congress, Dec. 6, 1910, Papers relating to the. 1915. 884 p. 8°. House doc. No. 1000. *Dept. of State.*

Labor. List of United States Government Publications sold by the Superintendent of Documents, Washington, D. C. Price list 33, 3d edition. March, 1915. 36 p. 8°. *Superintendent of Documents.*

Land Forces of the United States, Report on the organization of the. 1915. 89 p. 8°. *War Dept.*

Land Grants made by Congress to Aid in the Construction of Railroads, wagon roads, canals and internal improvements together with data relative thereto, statement showing. 1915. 28 p. Oblong 4°. *Secretary of the Interior, General Land Office.*

Latin-American Trade. Report of the Latin-American Trade Committee appointed by the Secretary of Commerce, Hon. William C. Redfield, pursuant to a resolution adopted at the informal Latin-American Trade Conference called at Washington, D. C., on September 10, 1914, by the Secretary of State and the Secretary of Commerce . . . 1914. 13 p. 8°.

Minimum-Wage Legislation in the United States and Foreign Countries. Bulletin 167. Miscellaneous series No. 8. 1915. 335 p. 8°. *Department of Labor, Bureau of Labor Statistics.*

Nicaraguan Mixed Claims Commission, Report of. Transmitted . . . to the Secretary of State of the United States. 1915. 84 p. 8°.

Opium and Other Drugs, Suppression of the Abuse of. Convention and final protocol between the United States and other powers. . . . Proclaimed, March 3, 1915. Treaty series, No. 612. 1915. 32 p. 8°. *State Department.*

Pan American Financial Conference.

(1) Address of the President of the United States . . . Washington, D. C., May 24, 1915. 1915. 4 p. 8°.

(2) Address of John Barrett, Director General of the Pan-American Union . . . 1915. 8 p. 8°.

(3) Address of the Secretary of State . . . May 24, 1915. 1915. 5 p. 8°.

(4) Address of the Secretary of the Treasury delivered at the opening session . . . May 24, 1915. 1915. 8 p. 8°.

(5) Address of Charles S. Hamlin, Governor of the Federal Reserve Board . . . May 25, 1915. 1915. 14 p. 8°.

(6) Address of Joseph E. Davies, chairman of the Federal Trade Commission of the United States of America . . . on Thursday, May 27, 1915. 1915. 8 p. 8°.

(7) Address of Hon. Paul M. Warburg, member of the Federal Reserve Board . . . 1915. 11 p. 8°.

(8) Argentina. Address of Hon. Samuel Hale Pearson . . . May 24, 1915. 1915. 4 p. 8°.

Argentina. Memorandum on the finances of Argentina submitted . . . by the Hon. S. Hale Pearson. 1915. 7 p. 8°.

Argentina. Memorandum submitted by Dr. R. C. Aldao . . . in support of the drafts of resolutions presented by him . . . on uniformity of commercial laws, maritime transportation, and the creation of an "International Committee of Commercial Arbitration." 1915. 15 p. 8°.

(9) Bolivia. Memorandum on Bolivian finance. 1915. 7 p. 8°.

(10) Brazil. Report group conference committee on banking, trade, and commerce and laws relating thereto. 1915. 14 p. 8°.

(11) Cuba. Report of group conference committee submitted by the Cuban delegation. 1915. 14 p. 8°.

(12) Dominican Republic. Memorandum submitted by the Hon. Francisco J. Peynado, delegate of the Dominican Republic to the Pan-American Financial Conference. 1915. 4 p. 8°.

(13) Ecuador. Memorandum submitted by the delegation of the Republic of. 1915. 8 p. 8°.

(14) Nicaragua. Informal memorandum submitted . . . by Hon. Pedro R. Cuadra, delegate of Nicaragua. 1915. 4 p. 8°.

Nicaragua. Memorandum submitted by Dr. Pedro Rafael Cuadra, delegate of the Republic of . . . 1915. 8 p. 8°.

(15) Panama. Memorandum submitted by the delegation of the Republic of Panama. 1915. 5 p. 8°.

(16) Paraquay. Memorandum submitted by the delegation of . . . 1915. 11 p. 8°.

(17) Remarks of Hon. William C. Redfield, Secretary of Commerce . . . 1915. 11 p. 8°.

(18) Report of the Committee . . . on the Republic of Nicaragua, Central America. (Group conference committee.) 1915. 6 p. 8°.

(19) Report of the general committee on uniformity of laws relating to trade, commerce, and international commercial court. 1915. 6 p. 8°.

(20) Report of the subcommittee of the general committee on uniformity of laws relating to trade, commerce, and international commercial court, appointed to consider and report upon (1) the subjects to be dealt with by the general committee. (2) The organization necessary to carry into effect the resolutions of the conference. 1915. 4 p. 8°.

(21) Salvador. Memorandum submitted by the delegation of the Republic of . . . Thursday, May 27, 1915. 1915. 5 p. 8°.

(22) Uraguay. Effects of the European war. Memorandum submitted by the delegation of Uraguay. 1915. 17 p. 8°.

Uruguay. Questions submitted by the delegation of the Republic of Uraguay. 1915. 4 p. 8°.

Patent Office, Rules of Practice in the United States, revised July 17, 1907. (Ninth reprint August 1, 1914, with supplement.) 1915. 124 p. 8°. *Patent Office.*

Statistical Abstract of the United States, 1914. Thirty-seventh number. 1915. 720 p. 8°. House doc. 1672. *Dept. of Commerce, Bureau of Foreign and Domestic Commerce.*

The Story of the Census, 1790-1915. [1915.] 36 p. 8°. *Dept. of Commerce, Bureau of the Census.*

Tariff Acts of 1909 and 1913, Comparison of the. Showing the classifications, rates of duty and sections of the acts of Aug. 5, 1909, and Oct. 3, 1913, together with the equivalent ad valorem rates of duty on the imports for the fiscal year ending June 30, 1913. Prepared under the direction of the Ways and Means Committee by John E. Walker, asst. clerk to the committee. 1915. 344 p. 8°. *House of Representatives, Committee on Ways and Means.*

CALIFORNIA

Constitution of the State of California and Summary of Amendments, to which are appended Magna Charter, Declaration of Rights, Declaration of Independence, the Articles of Confederation and the Constitution of the United States. 1915. 347 p. 16°. *Legislative Counsel Bureau.*

Impeachment of Hon. John L. Childs, Judge of the Superior Court of the State of California, in and for the county of Del Norte, proceedings, including the report of the assembly judiciary committee appointed to investigate charges preferred for the. 1915. 18 p. 8°.

Industrial Welfare Commission. First Biennial Report . . . 1913–14. 1915. 123 p. 8°.

Legislative Manual and Form Book. 1915. 105 p. 8°. *Senate Minute Clerk.*

Recreational Inquiry Committee. Report . . . 1914. 60 p. 8°.

Note: Special commission to consider the existing conditions of recreation in the state and to make recommendations therefor.

COLORADO

Domestic Disturbances, The Power and Authority of the Governor and Militia, in, a brief by Henry J. Hersey, Esq. 1915. 8 p. 8°. *Adjutant General.*

Ludlow. Being the Report of the Special Board of Officers Appointed by the governor of Colorado to investigate and determine the facts with reference to the armed conflicts between the Colorado National Guard and certain persons engaged in the coal mining strike at Ludlow, Col., April 20, 1914. 1915. 29 p. 8°. *Adjutant General.*

Wage Board. First Report . . . for the Biennial Period ending November 30, 1914. 1914. 28 p. 8°.

Workmen's Compensation Laws passed by the 20th Gen'l Assembly . . . 1915. 65 p. 8°. *Secretary of State.*

CONNECTICUT

Commission to Investigate the Advisability of Consolidating Certain State Boards and commissions, and to investigate the public health laws. Report . . . to . . . the general Assembly of 1915. 1915. 108 p. 8°.

Note: Commission appointed under provision of House bill No. 138, General Assembly, 1915.

ILLINOIS

Efficiency and Economy Committee. Report . . . 1914. 80 p. 8°.

Note: General report of the committee appointed to investigate the whole fabric of state government with a view to recommend changes looking to a more efficient administration of the same.

——— A report on the accounts of the state of Illinois, by George E. Frazer . . . 1914. 64 p. 8°.

——— A report on the administration of labor and mining legislation . . . by W. F. Dodd . . . 1914. 104 p. 8°.

——— A report on revenue and finance administration by John A. Fairlee . . . 1914. 103 p. 8°.

——— A report on supervision of corporations and related business, by Maurice H. Robinson . . . 1915. 56 p. 8°.

Handbook Illinois Legislature. Forty-ninth General Assembly. 1915. 125 p. 24°. *Clerk of the House.*

INDIANA

Legislative Investigating Committee Report . . . on State, educational, benevolent and correctional institutions and public buildings, departments, boards and commissions to the 69th General Assembly, 1915. 1915. 292 p. 8°.

IOWA

The Property Concepts of the Early Hebrews, by M. J. Laurê. 1915. 98 p. 8°. Studies in sociology, economics, politics and history. Vol. 4, No. 2. *University of Iowa.*

KANSAS

Roster of Kansas for Sixty Years. 1915. 34 p. 8°. *Historical Society.*

Note: Reprinted from the 19th biennial report of the Kas. State Historical Society, 1913–14.

MAINE

Documentary History of the State of Maine, V, 20, containing the Baxter manuscripts edited by James Phinney Baxter. 1914. 486 p. 8°. *Historical Society.*

MARYLAND

Educational Situation in Maryland by a special committee of the Board of State Aid and Charities Report on . . . 1914. 33 p. 8°. *Board of State Aid and Charities.*

MASSACHUSETTS

Address of His Excellency David I. Walsh to the two Branches of the Legislature of Massachusetts, Jan. 7, 1915. 1915. 58 p. 8°.

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